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**STATE OF MINNESOTA  
OFFICE OF THE ATTORNEY GENERAL**

**ANNUAL REPORT REQUIRED BY**

**Minnesota Statutes Section 8.15,  
Subdivision 4 (2004)**

**Fiscal Year 2005**

# TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
GOVERNMENT OPERATIONS SECTION.....	2
Human Rights/Labor/Corrections Division .....	2
Human Services Division .....	4
Public Finance/Agriculture/Natural Resources Division.....	5
Telecommunications and Energy Division.....	9
Transportation Division .....	12
GOVERNMENT REGULATION SECTION .....	14
Charities .....	14
Environmental Protection Division.....	16
Health/Antitrust Division.....	18
Health Licensing Division .....	22
Health Licensing Investigations Division.....	23
Residential and Small Business Utilities Division.....	24
GOVERNMENT SERVICES SECTION.....	26
Civil Litigation Division .....	26
Education .....	28
Medicaid Fraud Division .....	30
Tax Litigation Division.....	32
SOLICITOR GENERAL SECTION .....	34
Appeals Division.....	34
Commerce Division .....	34
Consumer Enforcement and Services Divisions.....	36
Public Safety/Gambling Division .....	39
Trial Division.....	41
APPENDIX A: Expenditures.....	A-1
APPENDIX B: Special Attorney Expenditures.....	B-1

## **INTRODUCTION**

This report is intended to fulfill the requirements of Minnesota Statutes Section 8.15, Subdivision 4, for Fiscal Year 2005 (FY 05).

The Attorney General's Office (AGO) is organized into four sections under the direction of deputy attorneys general: Government Operations, Government Regulation, Government Services and Solicitor General. This report contains brief summaries of the services provided to state agencies and other AGO clients by these sections.

# GOVERNMENT OPERATIONS SECTION

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## HUMAN RIGHTS/LABOR/CORRECTIONS DIVISION

The Human Rights/Labor/Corrections Division represents the Departments of Human Rights, Labor and Industry, Economic Security, and Veterans Affairs as well as the Bureau of Mediation Services, Public Employee Retirement Association ("PERA"), Minnesota State Retirement System, Teacher's Retirement Association, Department of Corrections, Veteran's Home Board, Client Security Board, the Collections Division of the Department of Revenue, and the Insurance Division of the Department of Employee Relations. In addition, attorneys within the division provide bankruptcy and collections advice to all State agencies.

The division's major Human Rights activity is the handling of cases forwarded by the Department following a determination that there is reason to believe illegal discriminatory conduct has occurred. The division participates in mediation regarding these matters and seeks to obtain appropriate monetary and non-monetary relief. The division resolved 68 such cases in FY 05. The division's enforcement efforts resulted in Minnesota citizens receiving compensatory and injunctive relief for illegal discriminatory treatment. For example, in a case involving deaf and hard of hearing individuals, a group of five affiliated hospitals entered into a consent decree requiring them to: assess the communication needs of deaf and hard of hearing patients; timely provide sign language interpreters of specified qualifications; conduct comprehensive training of hospital personnel; revise their written policies and procedures to comply with the ADA and the MHRA and submit compliance reports for three years. In FY 05, the division obtained compensatory relief for Minnesota citizens in the amount of approximately \$872,200.

In addition, the division work included:

- Litigation and appellate work to preserve the resources of state funds and state pension funds for injured workers and disabled public employees. For example, representation of PERA in disability claims matters resulted in savings of approximately \$2,500,000 in pension funds.
- Mediation and litigation to enforce occupational safety and health standards, including cases regarding workplace fatalities. In FY 05, the Office resolved 25 OSHA cases and obtained about \$71,000 in OSHA fines.
- Participation in bankruptcy proceedings in order to protect the State's interest in collecting reemployment benefits overpayments. In the past fiscal year, Attorney General's Office intervention prevented the discharge in bankruptcy of approximately \$184,000 of improperly received benefits.

The division also provides a broad range of legal services to the Department of Corrections and all state correctional facilities. These legal services include a substantial amount

of litigation and a variety of client advice matters. The division has successfully handled a high volume of inmate lawsuits.

The division's commercial litigation and debt collection activities included:

- Obtained court judgments for the State, based on debts owed to various state agencies for overpayments, fees, loans, breach of contract, property damage, and fines;
- Protected the State's rights as a creditor in bankruptcies, receiverships, liquidations, and other such actions;
- Trained and worked with state personnel on collection, financial, and bankruptcy matters, and
- Represented the State's interests in probate court in escheat cases.

Examples of the division's work in bankruptcy matters included successful defense of an appeal by a taconite company attempting to evade liability for taconite production tax assessments in a case that also affirmed the powers of the Minnesota Tax Court. The division also represented the Department of Human Services in a Chapter 7 nursing home bankruptcy. In that case the State's efforts resulted in the residents' continued occupation of their homes and a successful asset sale to a financially solvent operator. Over the past fiscal year, the division's collection work resulted in cash recoveries of over \$9,000,000, judgments of over \$800,000, and claims asserted in bankruptcy cases of over \$1,000,000.

## HUMAN SERVICES DIVISION

The Human Services Division provides litigation counsel and comprehensive legal services to the Minnesota Department of Human Services (DHS). The following describes some of the major areas in which the division provides legal services to DHS.

**Health Care.** Division attorneys represent DHS in Health Care and Continuing Care areas on a broad range of issues. In the Health Care area, division attorneys represent the agency in matters concerning Medical Assistance (MA), MinnesotaCare, and General Assistance Medical Care (GAMC). In the Continuing Care area, division attorneys represent the agency in the areas of disability services, nursing facilities, aging and adult services, deaf and hard of hearing services, and HIV/AIDS programs. Division attorneys also assist the agency in monitoring provider compliance and assist in recovering payments for health care services from providers, responsible third-parties, and estates. Examples of legal services provided in FY 05 include:

- *Dahl v. Goodno:* Defended the commissioner in a class action lawsuit challenging provisions of 2003 Minnesota statutes imposing co-payments for Medical Assistance services and prescription drugs. Plaintiffs seek declaratory and injunctive relief, monetary recovery of co-payments that may exceed \$10 million, costs, and attorneys' fees.
- *Medical Assistance Supplemental Payments Litigation:* Represented DHS in administrative litigation with the federal Centers for Medicare and Medicaid Services (CMS). DHS appealed CMS's disapproval of a state MA Plan amendment providing for increased payments to county-owned nursing homes, and the division is defending against CMS's attempt to recover the federal share of increased payments in separate proceedings. Should CMS succeed in the present litigation and its threatened disapproval of other similar state plan amendments, the State faces the loss of federal financial participation exceeding \$10 million per year.
- *ARRM v. Goodno, et. al; Masterman/ARC v. Goodno, et. al:* Represented the commissioner in consolidated federal lawsuits brought by recipients, an advocacy group, and a provider organization. Plaintiffs challenged DHS's "rebasings" of funding to counties for waiver services for persons with mental retardation and related conditions (MR/RC). Plaintiffs sought declaratory and injunctive relief requiring additional agency expenditures in the tens of millions of dollars. Both lawsuits were settled.
- *Third-party liability collections:* Division attorneys assisted DHS in recovering \$10.6 million for payment of MA and Alternative Care services through liens and from special needs trusts during FY 05. The division assisted in collecting \$4.6 million for DHS in tort claims and lawsuits against third-parties.

**Children & Family Services.** Division attorneys advise and represent DHS's Children and Family Services division in three broad areas:

- State public assistance programs, such as the Minnesota Family Investment Program (MFIP), General Assistance Program (GA), Minnesota Supplemental Assistance Program (MSA), and the Food Stamp Program. During FY 05, the division defended DHS at the appellate level in class action litigation challenging the agency's implementation of 2003 amendments to the MFIP statutes;
- DHS's Child Support Division. During FY 05, division attorneys successfully defended challenges against Minnesota's child support guidelines, and also defended challenges to DHS's policy regarding income withholding. The division assists DHS in improving state and federal efforts to collect support from non-custodial parents. During FY 05, DHS collected \$595 million in child support;
- Children's protection, including children's welfare, adoption, foster care, guardianship, tribal issues, and other areas. Division attorneys assisted DHS in negotiating the Tribal/State Agreement on Indian Child Welfare.

**Licensing.** Division attorneys represent the DHS Licensing division, the lead agency for investigating alleged maltreatment in programs licensed to provide adult daycare, adult foster care, services for mental health, developmental disabilities, chemical health, and personal care provider organizations. Division attorneys appear in administrative proceedings and appellate courts seeking to uphold disqualifications of individual health care providers and to enforce actions against license holders. Division attorneys represented DHS in over forty licensing proceedings in FY 05.

**Mental Health.** Division attorneys advise and represent DHS on issues concerning chemical health, adult and children's mental health, and State Operated Services. In FY 05, division attorneys represented the commissioner in numerous cases involving petitions for discharge, transfer, or other relief brought by individuals committed to the Minnesota Sex Offender Program (MSOP) and the Minnesota Security Hospital (MSH). In addition, Division attorneys defended DHS and state personnel in many civil lawsuits brought by patients at MSOP, MSH and other state treatment facilities. Division attorneys also routinely assist county attorneys in pursuing orders in district court for neuroleptic medications to be given to patients residing in DHS facilities.

## **PUBLIC FINANCE/AGRICULTURE/NATURAL RESOURCES DIVISION**

The Public Finance/Opinions/Small Boards/Agriculture/Department of Natural Resources Division represents the Departments of Administration, Finance, Natural Resources, Agriculture, and Employment and Economic Development; as well as the Housing Finance Agency, Iron Range Resources, State Board of Investment, Board of Water and Soil Resources, State Auditor, Legislative Auditor, Secretary of State, and many other smaller boards, agencies and commissions. The division also represents the Minnesota State Colleges and Universities System and other state agencies in contract, lease and other transactional matters. The division's work during FY 05 included:

- Represented the Governor and Commissioner of Finance in connection with a legal challenge to an unallotment from the Minnesota Minerals 21st Century Fund;
- Represented the Campaign Finance and Public Disclosure Board in court cases to enforce lobbyist and campaign finance laws and advised the Board regarding enforcement of campaign contribution, finance and lobbyist registration laws;
- Facilitated bond issuance by providing legal consultation to state agencies for over \$1.8 billion in general obligation and revenue bonds;
- Provided extensive advice to state clients on intellectual property, data practices, open meeting law, procurement, and other issues related to state government operations; assisted in drafting and revising leases, licenses and contracts; and registered trademarks on behalf of a number of state agencies.
- Responded to 29 requests for formal legal opinions and a myriad of requests for informal legal guidance from local governments;
- Advised the Housing Finance Agency (HFA) regarding numerous loans to preserve low income housing and several variable rate bond transactions with interest rate swaps and defended HFA in a federal lawsuit brought by a low-income housing landlord which was ultimately decided by the Eighth Circuit Court of Appeals;
- Advised and represented the Secretary of State in various election, corporate and trade name registration matters, including several matters pertaining to the 2004 election and the defense of a data practices action;
- Advised Iron Range Resources Agency and Board on legal matters involving Mesabi Nugget, Excelsior Energy, Giants Ridge development, Iron World; Motoplex National Steel Pellet, LTV, EvTAC and KeeTac. Provided legal representation in various areas including real estate sales and purchases; title registration; non-profit conversion, eminent domain, taconite tax distribution and bankruptcy.
- ~~Facilitated the filing of claims by the Minnesota State Board of Investment (MSBI); assisted in representation of the MSBI in securities litigation; and advised it in connection with various investment management agreements and other alternative investments.~~
- Successfully defended the Departments of Education and Administration in a suit by an unsuccessful bidder on the statewide basic skills test contract;
- Represented the Department of Health and Minnesota State Colleges and Universities (MnSCU) in connection with alleged copyright and patent infringement claims;
- Advised numerous small boards and agencies, including the boards of Accountancy, Architecture, Arts, Barbers and Cosmetologists, Crime Victims, Electricity, Peace Officer

Standards and Training, Teaching, and School Administrators and represented those boards in over 36 contested matters;

- Advised and represented the Department of Administration and the Office of Administrative Hearings in connection with several municipal boundary adjustment matters and on issues arising from transfer of the boundary adjustment function to the Office of Administrative Hearings from the Department of Administration;
- Assisted in representing the Minnesota Racing Commission in defense of challenges to the granting of a racing license and exclusions of persons from the track at Canterbury Downs;
- Defended the Office of Lawyers Professional Responsibility in a defamation action;
- Defended the State in a variety of lawsuits including a third party worker injury action and Torrens assurance fund claims;
- Advised MnSCU and drafted documents for the following projects: construction of a student housing project at Itasca Community College; a property management agreement between Southwest Minnesota State University and the SMSU Foundation for a student housing facility; and a district heating agreement between District Energy and St. Paul College;
- Advised the Department of Employment and Economic Development (DEED) and Minnesota Pollution Control Agency (MPCA) on a brownfield loan relending program;
- Advised the Department of Administration on enforcement matters, including issues involving manufactured homes and real estate matters, including conservation easements, easements for District Energy and agreements with St. Paul District Energy;
- Represented and advised the Minnesota State Fair in a number of matters relating to fair operations;
- Advised the Department of Human Services in connection with several multi-million dollar software contracts;
- Advised the commissioners of Administration and Transportation regarding contracts and barter arrangements to complete or enhance fiber network facilities;
- Provided ongoing advice and representation to Department of Natural Resources (DNR) Ecological Services in connection with the aquatic plant management permit program, the endangered and threatened species program and the wild and scenic river program;
- Provided general advice to DNR Enforcement regarding numerous matters, including the Wetlands Conversation Act; tribal sovereignty and jurisdiction and vehicle and equipment confiscations;

- Assisted DNR Forestry with numerous fire fighting cost recovery cases, including the collection of costs related to the Carlos Avery fire in the amount of \$68,000; advised DNR with respect to matters involving timber harvest permits, forestry roads and access issues, and issues regarding trespass and encroachments on state forest land;
- Provided legal services to DNR in a wide variety of Indian law matters, including resource management and harvest issues under the 1837 Treaty (Mille Lacs), continued negotiation of Phase II of the 1854 Treaty case (Fond du Lac) and issues of trespass, tribal sovereignty and state-tribal jurisdiction;
- Assisted DNR with approximately 124 real estate acquisitions totaling over \$12.9 million and involving approximately 10,655 acres of land and prepared title opinions and drafted deeds with respect to approximately 23 land exchanges;
- Represented DNR in a number of district court actions involving real estate transactions and disputes; condemnation proceedings; responded on behalf of DNR to approximately 107 quiet title actions and land registrations in order to preserve the State's mineral interests and regulatory rights on navigable waters and defended a quiet title action regarding severed minerals;
- Represented DNR in administrative level, district court and court of appeals matters regarding maintenance and repair of drainage ditches, issuance of permits for work in public waters, enforcement of lakeshore zoning regulations and restoration of waters and wetlands;
- Provided legal services to DNR relating to prescriptive easements across wildlife lands, establishment of Scientific and Natural Areas, water level management of Bear Lake in Freeborn County and numerous day-to-day issues arising in connection with Wildlife's extensive regulatory programs;
- Represented Department of Agriculture (MDA) in administrative law matters, including the suspension of a Grade A and manufacturing grade dairy certification based on unsanitary conditions; an enforcement action against a landscape nursery for failure to comply with gypsy moth quarantine orders and successfully defended the commissioner in an action in which plaintiff claimed that a statutorily mandated check-off fee violates the First Amendment;
- Advised the Board of Water and Soil Resources (BWSR) on real estate issues related to conservation easements, including reviewing approximately 50 Reinvest in Minnesota easements and the state-federal MOU for the new CREP II program;
- Advised BWSR on the Wetland Conservation Act program regulatory appeals, wetland banking and easement transactions, and representing both BWSR and DNR in disputes involving issues relating to implementation of the Wetland Conservation Act;

- Reviewed three tax increment finance enforcement matters referred by the Office of the State Auditor; two were resolved and the third is pending efforts of the City to locate missing records.

## **TELECOMMUNICATIONS & ENERGY DIVISION**

The Telecommunications and Energy Division represents the Telecommunications and Energy Divisions of the Minnesota Department of Commerce (Department), including its Weights and Measures Division, before the Minnesota Public Utilities Commission (Commission), Office of Administrative Hearings, federal agencies, and state and federal courts. In FY 05, Division provided legal advice and representation to the Department on many matters, such as:

### **Telecommunications**

- **Merger/Acquisition.** Mergers of SBC Communications and AT&T Corp. and Verizon Communications and MCI. Lawyers provided legal advice to the Department in merger analyses and recommendation.
- **Wholesale Service Quality Standards.** Continued extensive work in light of Qwest's appeal of the Commission's approval of a performance assurance plan to ensure its provision of adequate and reliable local wholesale service. Lawyers assisted in the drafting of legal briefs to the Minnesota Supreme Court.
- **Performance Assurance Plan (QPAP).** Lawyers provided legal advice to the Department in reviewing if Qwest is satisfying its performance measures for providing wholesale services.
- **Wholesale Cost/Prices.** Lawyers are defending a Qwest challenge in federal court to the Commission's decision establishing the wholesale cost that Qwest may charge for leasing its physical plant and network.
- **Investigation of Anti-Competitive Conduct/Interconnection.** Provided legal advice to the Department in connection with its investigation of complaints by competitors against Qwest for a variety of anti-competitive actions including billing disputes.
- **Investigation/Implementation of Voice Over Internet Protocol Service.** Represented the Department in its work with VOIP providers to ensure compliance with Emergency 911 requirements ordered by the FCC.
- **Complaint regarding Phantom Traffic.** Competitors filed suit against Qwest for failing to provide essential billing services to allow local service providers to properly bill for the use of their networks. Provided legal advice to the Department in connection with this matter.

- Retail Service complaints. Lawyers assisted Department against carriers for illegal pricing including discriminatory pricing among customers.
- Unauthorized Provision of Telephone Service. Represented Department against several firms for providing local service without authorization.
- Local Service Competition - Network Elements and Resale. Extensive efforts have been required to investigate and enforce federal and state wholesale requirements, particularly the "impairment" test under an FCC order. Provided legal advice and representation to the Department with respect to its review of these matters.
- Price Discrimination. Lawyers assisted in partial settlement of the Department's complaint alleging improper price discount for switched-access service.
- Alternative Form of Regulation (AFOR) petitions of Qwest and Frontier. Both telephone companies filed proposals to extend their AFOR plans governing retail provision of local telephone service for another three years. Lawyers assisted with interpretation of new legislation and with settlement negotiations.
- Access Charge Reform. This complex matter involves possible reform of compensation among carriers for call origination and termination. Settlement discussions failed and the matter is now pending before the Commission.
- Universal Service. Continued advising the Department regarding appropriate level of universal service cost support for all local exchange carriers.
- Data Practices Compliance. Lawyers have advised the Department with respect to provisions of the Minnesota Government Data Practices Act.

## Energy

- Merger Enforcement/Monitoring. Continued to monitor and advise the Department regarding enforcement of the terms of the NSP merger with New Century, now known as Xcel Energy.
- Rate Increase Requests. Extensive discovery and trial work involved with rate increase requests of four regulated natural gas utilities.
- Electric Transmission Line Construction. Lawyers assisted the Department in reviewing the electric transmission plans of utilities serving Minnesota customers.
- Electric Transmission Lines Operation/Control. The Department exerts considerable effort to monitor and participate in matters before the Midwest Independent System Operator (MISO). These on-going efforts involve interpretation of federal as well as state enforcement jurisdiction.

- **New Construction of Electric Generating Plants.** Lawyers assisted in proceedings involving requests to build additional electric generation in Minnesota, and to construct natural gas pipelines in order to fuel new generators.
- **Emission Reduction Project.** Lawyers advised the Department in its review of Xcel Energy's \$1 billion request to convert two coal-fired generating plants to natural gas and to upgrade a coal-fired generating facility.
- **Encumbering Regulated Natural Gas Assets.** Opposed request of Aquila to use hundreds of millions of dollars of regulated natural gas assets in Peoples and Northern Minnesota Utilities to obtain financing for unregulated activities.
- **Investigation of Xcel's Service Quality Reporting.** Advised the Department regarding investigation of allegations by Xcel employees that it falsified documents regarding electric outages. Resulted in a settlement involving future service quality requirements as well as significant penalties if the measures are not met.
- **Electric Service Territory Complaints.** In several compensation disputes between electrical cooperatives and municipal utilities, lawyers assisted with legal analyses of compensation formulae, trial proceedings and legal briefs.
- **Conservation Improvement Plan (CIP) matters.** Advised Department in analyzing programs designed to meet statutorily required utility conservation spending.

## TRANSPORTATION DIVISION

The Transportation Division provides legal services to its primary client, the Minnesota Department of Transportation (MnDOT). A large part of the division's work involves eminent domain litigation.

The Transportation Division advises both MnDOT and other state agencies involved in construction projects and represents the State when contractors, subcontractors, or third parties sue the State on construction-related matters. The division also protects taxpayers by filing claims against entities that perform defective work or otherwise fail to comply with contract requirements.

The division represents all non-regulatory state agencies in matters involving compliance with state and federal environmental requirements and when they are involved in environmental litigation. The division advises client agencies on the legal ramifications of proposed activities and development projects, assists state agencies in real estate transactions involving contaminated development projects, and evaluates and attempts to resolve claims before litigation arises.

In FY 05 the division's activities included:

- Litigation related to eminent domain actions and appeals. Hundreds of properties are acquired for roadways and other transportation projects in legal actions. The division also defended MnDOT against claims that its projects have resulted in inverse takings and provided legal assistance in voluntary sales of real estate for transportation projects.
- Provided the Commissioner of Transportation and staff with general counsel legal assistance.
- Represented MnDOT in its statutory prevailing wage enforcement responsibilities, recovering unpaid wages for contractors' employees on MnDOT projects.
- Advised the Commissioner in adjudicating contested case decisions in regulatory matters such as prevailing wages and commercial driver licensure.
- Advised MnDOT regarding its programs and offices such as Equal Employment Opportunity, Aeronautics, Railroads and Waterways, Project Development, State Aid, Research and Investment Management and Office of Motor Carrier.
- Represented the Minnesota National Guard regarding legal matters, including contract review, and real estate transactions.
- Represented the Minnesota State College and University Board in litigation over construction contractor claims.

- Represented the Commissioner of Transportation in cases challenging the exercise of the commissioner's highway planning discretion and on the environmental impact of a major highway construction project.

# GOVERNMENT REGULATION SECTION

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## CHARITIES DIVISION

The oversight and regulation of nonprofit organizations and charities in Minnesota is vested in the Attorney General's Office through Minnesota Statutes Chapters 309, 317A and 501B and through common law.

Charitable organizations and professional fund-raisers must register and file regular reports with the Attorney General's Office. In the last fiscal year, over \$414,425 in registration fees were remitted to the general fund through the Charities Division. At the end of the fiscal year, the division had registered and is maintaining public files for over 6,700 charitable (soliciting) organizations, over 2,500 charitable trusts, and about 290 professional fund-raisers. The information from these files is made available to the public in their entirety in a public file room and in summary form that is entered into a database and made available through the Charities Division of the Attorney General's website. The division also makes available brochures relating to charitable giving that are accessible to the public through the website or in paper form.

While the financial and other information that is filed with the Charities Division and made available to the public increases the accountability of these organizations to the public and allows prospective donors to research the charitable purposes and financial condition of an organization, many Minnesota citizens do not have access to such information or simply require assistance. The Charities Division has extensive knowledge of nonprofits and charities laws and provides significant assistance to such citizens who frequently call or write the Attorney General's Office about a wide variety of nonprofit or charities issues, including such topics as: charitable solicitation; charitable organization and trust registration; charitable sweepstakes; nonprofit governance and misuse of charitable assets.

The Charities Division enforces laws relating to nonprofits, charitable organizations and professional fund-raisers. By statute, the Office receives notice of certain charitable trust and probate matters filed in the district courts that involve charitable assets or charitable beneficiaries. Through the Charities Division, the Office often becomes involved in those matters protecting charitable assets and representing the interests of charitable beneficiaries. Through the enforcement of laws governing nonprofit and charitable organizations, the Charities Division is able to help combat fraudulent charitable solicitations, and hold nonprofit organizations accountable to the public for how they raise, manage and spend charitable assets. Examples of the matters handled by the Charities Division in the past fiscal year include:

- *Fairview Health Services.* The Office completed its compliance review of Fairview Health Services in January of 2005. The compliance review of Fairview showed that it charged more to uninsured, cash-paying customers than to insurance companies and HMOs, that it did not offer sufficient charity care to patients in need, and that it used inappropriate debt collection techniques. As with the compliance review of other health systems, this Office also found areas where improvements were needed to address executive compensation, consulting contracts and travel and entertainment expenditures.

As a result of the compliance review, Fairview entered into an agreement with the Attorney General's Office that improved Fairview's collection practices and provided for greater discounts to the poor and uninsured.

- *Minnesota Hospitals Settlement Agreement.* After Fairview reached an agreement with the Attorney General's Office to improve its billing and debt collection practices, the Attorney General's Office entered into agreements with all other Minnesota hospitals relating to these topics. Under these agreements, the hospitals will not charge a patient whose annual household income is less than \$125,000 for any uninsured treatment in an amount greater than the amount the provider would be reimbursed for that service or treatment from the insurance company that provided the hospital with the most revenue for its services in the previous calendar year. These agreements also provide substantial protections for patients relating to debt collection practices of the hospitals and their collection agencies.
- *In the Matter of Syvilla M. Turbis Revocable Trust Under Agreement Dated July 1, 1996.* The Turbis Trust was established in 1996 to fund a number of charities and to gift the remainder of its assets to the University of Minnesota for medical research. Alvin Gramentz was the trustee for the trust founded by an elderly woman, Syvilla Turbis, and also acted as her financial advisor and power of attorney. Although at one point the trust had over \$4 million in assets, as a result of transactions with Mr. Gramentz, specifically the purchase of two \$1 million annuities and a \$1 million life insurance policy that designated him and his wife as the beneficiaries/owners, an estate tax liability was created that effectively siphoned off the remainder of trust monies to the IRS in gift taxes, with no monies remaining for charity. Mr. Gramentz petitioned the district court to approve his payment of these estate taxes. Pursuant to its common law and statutory authority over charitable trusts, assets and trustees, this Office objected to the petition. During the last reporting period, a preliminary order was entered which, among other things, removed Mr. Gramentz as trustee, ordered the annuity payments to be paid into the court, and imposed a constructive trust over funds held by Mr. Gramentz that came from the trust, which resulted in a payment of funds in excess of \$1 million into the court. During FY 05, the state and federal taxing authorities returned over \$1.6 million to the trust which will be distributed to the charitable beneficiaries.
- *Vang Pao Foundation.* In April 2005, the Charities Division sued the Vang Pao Foundation, a nonprofit organization, for failing to register with the Office as a charitable soliciting organization or charitable trust, and for several violations of the Minnesota Nonprofit Corporation Act, including failing to have a board of directors and failing to keep complete and accurate financial records. The organization has ceased operating while the litigation proceeds.
- *In Re Global Mindlink Foundation and Select International Donors Corporation.* Global Mindlink Foundation and Select International Donors Corporation are Florida nonprofits that solicited funds from elderly Minnesota consumers. They sold "annual memberships" to the consumers under which the consumers became eligible for prize drawings. The cost of each such membership varied, but were mainly between \$200 and \$400 for each membership. Multiple memberships were sold to the same elderly consumers. At the

onset of the investigation, Global and Select quit soliciting in Minnesota and refunded approximately \$1,500 for one Minnesotan's memberships. The Charities Division then filed a Complaint against both Global and Select. Subsequently, the organizations entered into a Consent Judgment and Stipulation, which includes an agreement to pay full restitution (approx. \$30,000), plus an additional \$2,000 for any future complaints, \$5,000 for litigation costs, a permanent injunction against both of the principals in the organizations as well as the organizations and a \$50,000 stayed civil penalty.

## **ENVIRONMENTAL PROTECTION DIVISION**

Attorneys in the Environmental Protection Division (EPD) provide legal advice and representation to the Minnesota Pollution Control Agency (MPCA), the Environmental Quality Board, and the Office of Environmental Assistance.

### **Environmental Law Enforcement**

EPD attorneys work with MPCA staff members and provide legal advice regarding available enforcement alternatives. Once MPCA decides on a course of action, EPD attorneys assist in carrying out that action. For most enforcement actions this generally involves MPCA's issuance of an administrative penalty order (APO) that identifies corrective actions for a party to come into compliance with environmental laws and the payment of a civil penalty in an amount up to \$10,000. The penalty may be forgivable or non-forgivable. If the regulated party disagrees with the order, it may request a contested case hearing before an administrative law judge or petition for review before a district court. In either case, the resulting litigation is handled by an EPD attorney.

For more serious violations, stipulation agreements are negotiated with the regulated party. These agreements generally establish a schedule for taking corrective action or coming into compliance, the payment of a civil penalty, and sometimes the implementation of supplemental environmental improvement projects. EPD attorneys are involved in these negotiations to address legal issues that arise and assist in drafting language that clearly prescribes the roles and responsibilities of the parties. In situations where settlement cannot be reached, the enforcement matter is litigated in district court on behalf of MPCA by EPD attorneys.

In FY 05, MPCA took 197 enforcement actions, including 159 APOs and 38 stipulation agreements. The civil penalties imposed totaled \$2,092,095. The enforcement actions also included provisions to ensure compliance with environmental laws. Regulated parties also agreed to carry out supplemental environmental improvement projects having an estimated value of \$1,019,329. Enforcement matters handled by EPD attorneys during FY 05 included the following:

- EPD represented the MPCA in negotiating a stipulation agreement with Potlatch Corporation for violations related to nitrogen oxides permit limit exceedances and inoperable air pollution control equipment. Under the terms of the stipulation agreement the regulated party paid a civil penalty of \$725,000.

- EPD represented the MPCA in negotiating an agreement with three parties for violations arising out of mismanagement of the hydrant fuel system at the Lindberg Terminal and at the Post Road tank farm at the Minneapolis/St. Paul International Airport. Under the terms of the stipulation agreement Airport Service International, Inc., the Metropolitan Airports Commission, and the Minneapolis Fuels Consortium collectively paid a \$125,000 civil penalty. The agreement also required the parties to implement substantial improvements in spill reporting and response and in management of the hydrant fuel system. The settlement also called for remediation of areas impacted by the spills. The supplemental environmental projects in this settlement were valued at \$370,000.
- EPD represented the MPCA in negotiating a stipulation agreement with Cliffs-Erie, Inc./Minnesota Power to address violations related to the unpermitted discharge of approximately one million gallons of coal ash leachate to Lake Superior. Under the terms of the stipulation agreement the regulated party paid a \$56,000 civil penalty.
- EPD represented the MPCA in negotiating a settlement with Gopher Resource Corporation for violations arising out of the illegal disposal of hazardous waste at a solid waste landfill. Under the terms of the agreement the regulated party paid a \$10,000 civil penalty, plus \$55,000 to supplemental environmental projects geared towards providing money to homeowners who discover lead-acid battery chips in their septic fields.

#### **Client Advice and Other Litigation**

EPD provides legal advice and litigation services to the MPCA on a variety of non-enforcement issues. On average, approximately 200 files are open regarding ongoing legal advice. The majority of legal issues on which MPCA seeks legal services involve permitting, rulemaking, and environmental review. For example, in FY 05, the EPD represented the MPCA on numerous environmental review and permitting appeals in district courts, the Office of Administrative Hearings, and the Minnesota Court of Appeals. The most noteworthy of these matters, some of which are ongoing, include the St. Cloud, Owatonna/Faribault and Annandale/Maple Lake wastewater treatment facility permitting matters.

The EPD also represented the MPCA by defending against private actions related to regulatory matters in FY 05. For example, the EPD successfully defended the MPCA against a \$5.5 million inverse condemnation/regulatory taking claim brought by the Dullea Land Company. The Dullea Land Company had operated an illegal and unpermitted feedlot that polluted the Buffalo River in Clay County. The MPCA subsequently denied the Dullea Land Company's application for a permit to operate a feedlot in the same location, and the Dullea Land Company subsequently sued the agency.

The EPD also provided legal services to the MPCA on a variety of real estate and contract matters in FY 05, including several real estate transactions for MPCA's closed landfill program. Other areas in which the EPD provided legal advice and services included: tank leak cleanup cost recoveries; superfund cleanups; natural resource damages; asbestos removals; bankruptcies; contract disputes; hazardous and solid waste disposal; creation of sewer districts; creation of conservation easements; purchases of easements and real property; groundwater

contamination; federal facility superfund cleanups; individual septic treatment systems; administrative inspection orders; storm-water runoff; air toxics and federal new source review.

### **Legal Services To Other EPD Client Agencies**

*Environmental Quality Board (EQB).* EPD provides legal advice to the EQB with respect to the implementation of its delegated legal authorities. EQB operates as a general interagency coordinating board for environmental quality issues involving the State and its citizens. During FY 05 EQB continued to have two major areas of responsibility: (1) as overseer of the environmental review process as carried out by local and state governmental units under the Minnesota Environmental Policy Act and (2) the issuer of permits regarding sites and routes for large energy facilities under the Power Plant Siting Act and other laws.

*Office of Environmental Assistance (OEA).* OEA awards grants for innovative projects to reduce and prevent waste and pollution, improve recycling and composting, conserve resources, conduct resource recovery, and provide environmental education. OEA also has responsibility to: assist businesses and local government in all areas of solid waste matters, coordinate the state-wide household hazardous waste program, approve county solid waste management plans, and issue certificates of need for mixed municipal solid waste capacity. In FY 05, the EPD provided a variety of general legal services to OEA, including loan document preparation, contract review and grant terms review.

The EPD provides general counsel in all of the above areas.

## **HEALTH/ANTITRUST DIVISION**

### **Health Matters**

The division provides legal advice to the Minnesota Department of Health (MDH) concerning its regulatory responsibilities and represents MDH in all litigation and administrative enforcement actions. MDH regulates and oversees a number of different subject areas, including infectious diseases, food-borne illness outbreaks, health care facilities, environmental health hazards, health maintenance organizations (HMOs) and certain health professionals. The division also advises MDH about legal issues concerning contracts, leases and other transactions.

Specific examples of the division's work in FY 05 include the following:

- *Nursing Home Emergency.* A nursing home notified MDH staff that it was facing a financial crisis and could not meet its next payroll. Division attorneys quickly prepared and filed in district court an emergency petition requesting an involuntary receivership. The district court promptly granted the petition. In the following months, the Commissioner of Health's managing agent successfully relocated the residents and closed the nursing home. The receivership was then terminated by the district court. During the receivership, there was a dispute concerning the use of the nursing home's pre-receivership accounts receivable. One creditor brought a motion asking that the receivables be turned over to it instead of the Commissioner, but the district court agreed

with the Commissioner's interpretation of the receivership statute and denied the motion. The creditor appealed to the Minnesota Court of Appeals and division attorneys defended the district court's decision. The appeal is pending.

- **Anti-Kickback Review:** Division attorneys advised MDH staff in reviewing whether a business arrangement between a radiology company and a medical clinic violated the state's anti-kickback provision, Minn. Stat. § 62J.23. Division attorneys advised MDH staff that although the parties had some safeguards to minimize anti-kickback concerns, the arrangement still presented a significant danger of over-utilization of health care resources by rewarding referrals for MRIs and CTs through the use of a per-scan payment mechanism. MDH staff ultimately asked the parties to modify the business arrangement to come into compliance with the law. The parties subsequently informed MDH that they had modified the business arrangement.
- **HIV Health Threat:** MDH staff learned an HIV carrier was lying about his health status and engaging in unsafe behavior that was likely to spread HIV, even after having met with MDH staff about how to avoid transmitting the disease. The Commissioner of Health issued a Health Directive formally instructing the carrier as to how to avoid spreading HIV and requiring that he attend counseling. After he failed to go to counseling, division attorneys initiated a court proceeding to enforce the Health Directive. The HIV carrier ultimately agreed to go to counseling and thus the court proceedings have been continued until he completes the counseling.

As in prior years, a significant amount of the division's work in FY 05 involved defending MDH's determinations that individuals or companies violated the Vulnerable Adults Act by neglecting, abusing or financially exploiting vulnerable adults. In addition, the division defended MDH decisions not to allow certain disqualified individuals to work in direct contact with patients or residents of health care facilities or health care service organizations (such as home care agencies). Examples of these cases include:

- **Nursing Home Neglect:** A 76-year-old woman was admitted to a nursing home for short-term rehabilitation. The resident was taking a prescribed weekly dose of Methotrexate for treatment of rheumatoid arthritis. Methotrexate, a strong drug, is also sometimes used in chemotherapy treatment for cancer. Despite the toxicity of the drug, the nursing home administered Methotrexate daily for ten days instead of once per week, relying on erroneous doctor's orders. The nursing home's pharmacist and nursing staff failed to adequately monitor the resident's prescription medications and thus failed to discover the Methotrexate problem until after the resident began suffering from severe Methotrexate toxicity. The resident was hospitalized and required extensive medical care. MDH staff investigated the incident and determined the nursing home neglected the resident. The nursing home appealed and division attorneys defended MDH's determination. The Commissioner of Health affirmed the finding of neglect.
- **Home Care Agency Neglect:** An LPN who was employed by a home health care agency failed to properly assess a blood clot in a vulnerable adult's leg. Even though the vulnerable adult had a history of problems with blood clots, the LPN applied an ace bandage. The condition worsened, likely because of the ace bandage and lack of prompt

medical attention, and the vulnerable adult had to be hospitalized. MDH staff investigated and concluded the LPN neglected the vulnerable adult. The LPN challenged the finding and division attorneys defended MDH's decision. The Commissioner of Health ultimately affirmed the finding of neglect.

- ***Nursing Home Abuse:*** A nursing assistant found a nursing home resident on the floor of her room screaming for help. After a verbal exchange, the nursing assistant put the toe of his foot on the resident's head and leaned forward exerting pressure, causing the resident to scream in pain. MDH staff investigated and ultimately determined the nursing assistant abused the resident. On appeal, division attorneys defended MDH's finding and the Commissioner of Health affirmed.
- ***Nursing Home Abuse:*** A nursing assistant slapped a nursing home resident on the face three times when the resident would not release his grip on the side rails of a toilet. The resident had bruising on his right hand and an abrasion on his forehead. MDH staff investigated and determined the nursing assistant abused the resident. The nursing assistant appealed and division attorneys defended MDH's finding of abuse. The Commissioner of Health affirmed.
- ***Disqualification Appeal:*** A home health care aide was convicted of second degree assault after she stabbed her son. Based on the conviction, state law disqualifies her from working in certain health care positions, including as a home health care aide. She requested that the Commissioner of Health "set aside" her disqualification, arguing she did not pose a risk of harm to home health care patients. The Commissioner denied the request and the aide appealed to the Minnesota Court of Appeals. Division attorneys defended the Commissioner's decision and, after initially reversing and remanding for more specific findings, the Court of Appeals ultimately upheld the Commissioner.
- ***Disqualification Appeal.*** After a district court found an individual to be "palpably unfit" to be a parent (e.g., the home was unclean and unsafe and the three children suffered from serious "cleanliness issues"), the court terminated the individual's parental rights. Following the district court's action, the individual was disqualified from working in direct contact with persons receiving certain health care services (hospital patients, for example). The individual requested a "set aside" that would have allowed her to work in a particular health care facility. The Commissioner of Health denied her request, and she appealed to the Minnesota Court of Appeals. Division attorneys represented the Commissioner and the court ultimately affirmed the decision to deny the set aside.

## Antitrust Matters

The division investigates violations of state and federal antitrust laws, and enforces these laws when it uncovers evidence of anticompetitive conduct. The Minnesota Antitrust Act prohibits a number of activities that restrain trade, including price-fixing, bid-rigging, group boycotts, unlawful abuses of monopoly power and anticompetitive mergers. The division ensures consumers, businesses and government have a competitive environment in which to purchase goods and services. Examples of the division's work in FY 05 include:

- **Challenging Anticompetitive Mergers:** The division filed a lawsuit in Ramsey County District Court alleging that Allina Health System conspired to monopolize the market for cardiology services in the Twin Cities metropolitan area. The case arose after the State learned of efforts by Allina to acquire two local cardiology practices, St. Paul Heart Clinic and Metropolitan Cardiology Consultants. The State had concerns about these efforts because Allina already controlled the largest market share for cardiology services in the Twin Cities, and because cardiology is an area of medicine that offers high reimbursement rates. The case was ultimately settled and Allina represented in Court that it had no current intention to acquire or obtain control of St. Paul Heart Clinic and Metropolitan Cardiology Consultants. Allina further agreed to provide the State with written notice of any future efforts to acquire or control the two practices during the next two years, and to give the State at least 60-days to review any such transaction.
- **Challenging Anticompetitive Mergers:** First Data Bank (FDB), owned by Hearst, and Medi-Span were competitors in the field of electronic drug information databases used by pharmacists and other health care professionals. The Federal Trade Commission challenged Hearst's acquisition of Medi-Span and Hearst ultimately settled, divesting Medi-Span and disgorging its unlawful profits. A parallel state investigation was conducted and Hearst also settled that matter. Minnesota received \$27,228 for state damages resulting from the unlawful acquisition.
- **Challenging Pharmaceutical Industry Conduct:** The division participated in multi-state settlements with the manufacturers of the medications Relafen and Remeron. The settlements resolved allegations that the manufacturers of those name-brand drugs wrongfully manipulated the patent process to delay entry of lower-priced generic competitors into the marketplace. In addition to these cases, there are several other pharmaceutical manufacturers currently under investigation. The recent settlements were as follows:
  - In the *Relafen Litigation*, Minnesota assisted in obtaining a \$10 million multistate settlement with GlaxoSmithKline ("Glaxo") concerning the anti-inflammatory drug Relafen. The settlement resolved state claims, primarily for Medical Assistance purchases, that Glaxo delayed generic competition by fraudulently listing with the U.S. Patent Office and prosecuting litigation concerning the drug nabumetone, which Glaxo sells under the trademark Relafen. Minnesota received \$127,344 in government damages. Consumers were able to submit claims for refunds for their purchases of Relafen in connection with a private class action.

- The *Remeron* Litigation resulted in a \$36 million settlement which will be distributed nationwide to consumers, state purchasers and third party payers. The defendants in the case were Organon USA Inc. and its parent company Akzo Nobel N.V. Upon final approval of the settlement, Minnesota expects to receive damages for overpayments made by the State, primarily for the Medical Assistance program. Consumers nationwide will receive approximately 32 percent of the net settlement fund, and Minnesota consumers will be able to submit claims. Remeron is a widely prescribed antidepressant.
- ***Investigating Price Fixing:*** The Office received a complaint that two competitors in the heating and cooling industry had urged a third competitor to raise its prices so that all businesses in the industry would increase their earnings. The Office subsequently contacted the alleged price-fixers, warning them that discussions among competitors concerning pricing is illegal under state antitrust laws. No further violations have been reported.

## HEALTH LICENSING DIVISION

The Health Licensing Division represents the State's health licensing boards, the Health Professional Services Program, Minnesota Board of Law Examiners and the Continuing Legal Education Board. The Health Licensing Division works in conjunction with the Health Investigations Division. The division provides both general counsel services and advising-attorney services to each of the boards, represents the boards at disciplinary conferences and represents the boards in contested cases and judicial proceedings.

During FY 05 the division provided legal representation to all 16 of the State's health-related licensing boards. These include: Board of Medical Practice, Board of Nursing; Board of Psychology; Board of Chiropractic Examiners; Board of Veterinary Medicine; Board of Optometry; Board of Social Work; Board of Dietetics and Nutrition; Board of Marriage and Family Therapy; Board of Physical Therapy; Board of Behavioral Health and Therapy; Board of Nursing Home Administrators; Board of Dentistry; Board of Podiatry; Board of Pharmacy and the Emergency Medical Services Board.

The legal services provided center on those activities of the boards that protect the public, including complaint investigation and disciplinary action. The division provides all legal services needed day-to-day to assist the committee investigation and complaint handling processes. Division attorneys also provide legal representation to the boards during disciplinary hearings and conferences. During FY 05 the division handled numerous administrative contested case proceedings involving: sexual misconduct, patient neglect mental health/chemical dependency issues and health provider application fraud. For example, the division successfully handled a contested case that resulted in the revocation of a physician's license for serious sexual misconduct and assisted the Board of Nursing in preventing a nurse applicant who created fictitious school records from obtaining a nursing license.

The division also drafts numerous documents and due process pleadings and provides legal advice on licensure issues, data practices and open meeting law questions. Pre-litigation

mediation and negotiation were utilized to obtain contested case settlements during FY 05. During the past year the division negotiated a long-term suspension of a physician who had prescribed controlled substances without adequately guarding against patient misuse of the drugs and, in another matter negotiated the suspension of a nurse who had taken narcotics from a hospital supply room.

The division also assisted the Health Professionals Services Program in establishing practice restrictions for impaired physicians, nurses and other licensed health practitioners.

## **HEALTH LICENSING INVESTIGATIONS DIVISION**

The Health Licensing Investigations Division provides investigative services to and on behalf of 16 health licensing boards and two non-health licensing boards. The division works in conjunction with the Health Licensing Division.

Investigations of alleged misconduct have become increasingly complex. Diverse investigative skills and technical knowledge are required to conduct thorough fact-finding investigations to ensure maximum public protection. Division staff include: investigators with professional expertise in nursing, physician assistance, psychology, dentistry and other disciplines.

Cases submitted for investigation are reviewed using a common point-of-entry procedure. This procedure ensures a coordinated and focused approach from the beginning through completion of the investigation. Division investigators conducted over 300 investigations during the fiscal year. Investigations of allegations which, if proven, present immediate danger to the public and/or subject of the investigation are handled on an expedited basis. Twenty-five percent of all investigations during the fiscal year were conducted on an expedited basis. The division investigators:

- investigate allegations of sexual misconduct;
- review allegations relating to competency and quality of care;
- review billing records involving allegations of billing fraud;
- inspect practice settings for infection control procedures.

Upon completion of an investigation, a division investigator prepares a report that is forwarded to the appropriate licensing board.

In addition to other investigative techniques, division staff use investigative reporting procedures and case management software to investigate and manage their cases. These tools help investigators to achieve division objectives of conducting thorough investigations in a timely and efficient manner.

## RESIDENTIAL AND SMALL BUSINESS UTILITIES DIVISION

The Residential and Small Business Utilities Division (RUD) represents and advances the interests of residential and small business utility consumers in the complex and changing telecommunications, gas and electric industries, particularly where matters involve utility rates, reliability of utility service, and quality of service. In fulfilling these responsibilities, the RUD utilizes two essential functions: consumer mediation and legal advocacy.

The consumer mediation component of the RUD involves the investigation and mediation of individual consumer complaints relating to all aspects of utility service. During FY 05, the RUD responded to over 3,100 complaints, resulting in savings and refunds to utility consumers of over \$530,000 and the negotiation of innumerable non-monetary resolutions to consumer utility problems. In addition to handling complaints directly reported to the RUD by utility customers, RUD mediators also accept complaints referred to the AGO by the Department of Commerce and the Public Utilities Commission.

RUD consumer mediators see firsthand the problems experienced by utility consumers and they work proactively with the division's attorneys to address problems that become apparent through complaints received in the division. For example, the RUD received numerous consumer complaints against LCR Communications, Inc. (LCR) alleging that the company engaged in "slamming" and numerous instances of consumer fraud. The RUD filed suit against LCR and, as a result, LCR paid \$100,000 to the State and submitted its customer list to the RUD. The RUD mailed letters to 1,200 Minnesota consumers to notify them that their long distance service might have been switched without their knowledge. LCR provided full refunds to customers for whom a change in long distance service had not been authorized.

In its legal advocacy role, the RUD advocates on behalf of residential and small business utility consumers before the Minnesota Public Utilities Commission, in state and federal courts, and before the Federal Communications Commission. RUD attorneys appear on a wide range of matters in order to protect the interests of residential and small business consumers. For example, the RUD has vigorously defended the constitutionality of Article 5 of 2004 Minn. Laws, ch. 261, in a lawsuit called *Cellco v. Hatch*. That statute protects the interests of consumers with regard to changes in the terms of cell phone contracts. Just two weeks before this law was to become effective, wireless carriers filed suit to obtain an injunction prohibiting the State from enforcing its terms. The RUD successfully defended the validity of the law in the U.S. District Court and argued the matter before the U.S. Court of Appeals for the Eighth Circuit in May of 2005. This matter is still pending.

On the energy side, the RUD argued before the Public Utilities Commission against drastic increases to customer charges requested in the rate cases of CenterPoint Energy and Xcel Energy. As a result, the Commission disallowed the requested increases, which would have more than doubled the charges paid by the utilities' customers, and permitted only marginal increases to these charges. The RUD also played a key role in the Commission's investigation into CenterPoint Energy's compliance with Minnesota's Cold Weather Rule. The Cold Weather Rule is designed to ensure that Minnesotans of limited financial means are not forced to live without heat when low temperatures could be life threatening. In December of 2004, the Commission received numerous complaints from CenterPoint customers who had been

disconnected from their natural gas service, and whose service had not been restored despite extremely low winter temperatures. The OAG contacted over 1,000 CenterPoint customers to help them get their service restored. After the immediate crisis was resolved, the RUD spearheaded the investigation into CPE's conduct, examining CenterPoint's customer records to determine whether customers were afforded their right to reconnection, and filing several extensive reports of its findings with the Commission. This matter is ongoing.

## **GOVERNMENT SERVICES SECTION**

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The Government Services Section is comprised of three divisions that principally handle litigation on behalf of the State and also provide some legal advice to state agencies. The three divisions of the Government Services Section are: Civil Litigation, Medicaid Fraud and Tax Litigation.

The work of the section includes defending the constitutionality of state laws and various principles and doctrines that are essential to the effective operation of state government. The section is also responsible for the legal work for state agencies that oversee the State's educational system, for the State Revenue Department and for the Public Utilities Commission. In addition, the section provides a substantial financial benefit to the State. By collecting debts owed to the State and by successfully defending against claims that would have cost the State money, the section saves the State millions of dollars.

### **CIVIL LITIGATION DIVISION**

The Civil Litigation Division has several separate functions. First, the division provides litigation services to a variety of clients, ranging from constitutional officers to various state agencies. This includes legal advice and litigation defense for agencies and officials in the judicial branch of government. Second, the division provides legal representation to all state agencies and the judicial and legislative branches of the State in a broad range of employment issues and claims. Third, the division litigates tort claims against the State, its agencies and employees in personal injury, property damage and wrongful death lawsuits. Fourth, the division serves as general counsel to the members of the Public Utilities Commission (PUC) and the PUC's staff.

General civil litigation, including constitutional challenges, handled in the past year included defending:

- various civil rights actions brought against state officials in federal and state courts;
- the state court system's provision of sign language interpreters;
- the legality of the Ramsey County Juvenile Court's policy regarding the issuance of warrants for certain juveniles;
- the constitutionality of the jury-selection system in Hennepin County District Court; and
- the constitutionality of legislation allowing the State Public Defender to decline representation in certain post-conviction cases.

The division provides legal representation to all state agencies and the judicial and

legislative branches of the State on a broad range of employment issues and claims, including claims under the Minnesota Whistleblower statute, Minnesota Human Rights Act, Americans with Disabilities Act (ADA), Family Medical Leave Act (FMLA) and claims of discrimination and harassment under Title VII. In addition, the division has represented state agencies in several class action lawsuits involving claims of discrimination. The division represents the State and state officials in actions filed in federal and state courts and before administrative tribunals.

In addition to defending the State in employment law cases, the division provides day-to-day legal advice to State agencies. The division assists state agencies in addressing and resolving various employment problems, including: ADA accommodations, investigating harassment complaints, revising and implementing employment policies, releasing information under the Data Practices Act and state employee conflict of interest issues. The division is committed to employing methods that can prevent lawsuits, such as providing counseling early on in the process when employment law problems surface and conducting training sessions for managers, human resources directors and state judges on the recent developments of employment law and providing technical guidance.

The division litigates tort claims against the State, its agencies and employees, in personal injury and property damage lawsuits. Most commonly, the allegations are of negligence, but they also involve defamation, infliction of emotional distress, excessive use of force, interference with business relations and violations of federal civil rights. Examples include: highway crash cases in which the Minnesota Department of Transportation is faulted for inadequate design, construction or maintenance of a state highway; suits against the Departments of Human Services and Corrections for deaths occurring in the institutions they operate, and claims against the Department of Natural Resources arising from snowmobile and ATV accidents on state trails.

During the last calendar year, the division saved the State more than \$3.6 million dollars by its resolution of tort claims and an additional several million dollars from its successful defense of employment law claims.

The division advises the PUC on matters before it and represents the PUC in litigation in state and federal courts and before the Federal Communications Commission. The division has seen a continuing high volume of legal work in the telecommunications area, increasingly involving contract interpretation and enforcement of existing interconnection agreements among telecommunications carriers. As an example, the division successfully defended the PUC's decision to assess \$26 million in penalties upon Qwest for anticompetitive violations. (This matter is on appeal.) The PUC's pricing decisions for local telephone service related to matters involving the implementation of the federal Telecommunications Act has also been appealed to federal court. The PUC was the first state commission in the country to apply state law to a "voice over internet" or "VoIP" company. That decision has been appealed to the U.S. Eighth Circuit Court of Appeals. The division has also been involved in the defense in federal district court of new state legislation designed to protect wireless telephone consumers. Other pending telecommunications litigation in state and federal courts involves the scope of PUC jurisdiction and federal preemption issues.

The division also advises the PUC on matters concerning the PUC's regulation of the rates and practices of electric and natural gas utilities providing energy services in the State of Minnesota. The division provides additional counsel to the PUC on issues related to the implementation of legislative directives, such as the achievement of the renewable energy objective (currently in litigation) or development of the distributed generation tariff. The division also represents the PUC in proceedings before the Federal Energy Regulatory Commission. The PUC is actively involved in protecting the interests of Minnesota energy consumers when those interests may be adversely affected by decisions made at the federal regulatory level.

## **EDUCATION DIVISION**

The Education Division represents the State's complex and varied educational system, including the Minnesota Department of Education (MDE) and Minnesota State Colleges and Universities (MnSCU).

### **Minnesota State Colleges and Universities (MnSCU)**

MnSCU is a system of 34 colleges and universities, with 53 campuses, 140,000 students and 16,000 employees. The Chancellor's office in St. Paul has a staff of several hundred employees, coordinating centralized services in academic and student affairs, and financial and human resources matters. Attorneys work with MnSCU General Counsel to provide legal advice on system-wide issues.

Each college and university is assigned an attorney as a single point of contact for the president and senior staff to provide legal advice, legal input on policy matters, coordinating consistent advice to the colleges and universities, and litigation, especially disputes involving students. The division develops a program of preventive law including training programs and materials to meet campus needs.

### **Minnesota Department of Education (MDE)**

MDE administers the state's K-12 education and other children and family programs. Legal services to MDE are coordinated through a division attorney serving as general counsel. The division provides legal advice for MDE's many programs, such as the federal "No Child Left Behind Act", grants and loans for school construction, charter schools, graduation standards and testing, distance learning, and library development. The division provides legal advice and defends the department in its investigation of and decision-making in school-based maltreatment of minors' cases. The division helps interpret state and federal special education law and defends MDE in special education disputes.

### **Office of Higher Education (OHE)**

The Office of Higher Education, formerly the Higher Education Services Office (HESO), administers federal and state higher education programs, including: (1) student loan and financial aid programs; (2) registration of private and out-of-state public higher education

institutions that provide programs in Minnesota; and (3) licensure of private business, trade and correspondence schools. The division provides a full range of legal services for OHE, particularly providing advice on licensing private trade schools and student and private school data practices issues. Attorneys work with OHE to negotiate contracts for MnLINK, a statewide, computerized library system involving public and private libraries throughout the State.

### **The Perpich Center for Arts Education (PCAE)**

PCAE, the Arts High School, operates as a separate public school with similar responsibilities, as well as a residential school. The division advises PCAE on student discipline, grade appeals, admissions and residency requirements, data privacy and contracts.

Examples of matters handled by the division are:

### **MnSCU**

- ***Litigation.*** Successfully defended a state university and MnSCU at the Minnesota Court of Appeals. In a published opinion, the Court held that the state university and MnSCU are not responsible for an alleged libelous article in the student newspaper. Successfully negotiated resolution of several adverse audits by the U.S. Department of Education (USDOE), resulting in substantial financial savings.
- ***Discrimination and Harassment Issues.*** Worked with the main office and the campuses to develop and implement policies to comply with state and federal anti-discrimination laws. Trained campus investigators and decision-makers who process internal discrimination and harassment complaints. Defended charges of discrimination filed with the state Human Rights Department, the federal Equal Employment Opportunity Commission, and the Office for Civil Rights of the U.S. Department of Education.
- ***Promoting Campus Safety and Integrity.*** Successfully represented MnSCU colleges and universities in a variety of student disciplinary matters. The reasons for disciplinary action included: harassment, plagiarism and threats.
- ***Privacy.*** Advised MnSCU campuses on the privacy and data security requirements of the federal Family Education Rights and Privacy Act and the state Data Practices Act.
- ***Technology & Higher Education.*** Advised MnSCU in its work with new technology. Provided legal advice on intellectual property issues, the Internet, data practices, and the negotiation of complex, unique agreements and partnerships, and assisted in drafting systems policies including the system's computer use policy - guidance for campus policies on the use of computers (Internet, e-mail, bulletin boards) by students, faculty and staff.
- ***Planning for the Future - Preventive Strategies.*** Provided approaches to prevent legal problems, including training to educate key staff to avoid problems and to respond effectively.

## **Minnesota Department of Education**

- ***Charter Schools.*** Provided advice to the Department on issues relating to charter schools including: management accountability, lease aid, real property ownership, state regulation/deregulation, and charter school audits.
- ***Litigation.*** Defended MDE in the Court of Appeals in an action challenging an MDE approval on an on-line learning program.
- ***Special Education.*** Successfully defended MDE in numerous lawsuits in Minnesota federal district court and in the Eighth Circuit. These lawsuits challenged MDE's supervision of local school districts in complying with federal special education law, as well as MDE's due process hearing systems and MDE's complaint resolution decisions. Currently the division is defending separate lawsuits challenging MDE's rules on special education. Provided interpretation of federal and state laws regarding highly qualified special education and English language learner teachers.
- ***Maltreatment of Minor in Schools.*** Represented MDE in several maltreatment determinations issued by the Department that a school worker (such as a teacher, assistant teacher, or bus driver) maltreated a minor in a school.
- ***No Child Left Behind.*** Advised MDE in implementing the federal "No Child Left Behind Act," including advice on implementing new standards for special education teachers
- ***Desegregation Issues.*** Advised MDE in the implementation of the settlement of the public school desegregation litigation in the Twin Cities metropolitan area and application of the department's new desegregation rules.

## **MEDICAID FRAUD DIVISION**

The Medicaid Fraud Division is a federally-certified Medicaid Fraud Control Unit with a two-fold mission:

1. Review and investigate reports of vulnerable adult abuse and neglect in nursing homes, group homes, foster care homes, hospitals, board and care residences and by home care providers. In FY 05, the division opened 14 abuse and neglect investigations.
2. Investigate and prosecute health care providers who commit fraud in delivery of the Medical Assistance program. During FY 05, the division opened 38 fraud investigations and four patient fund investigations.

The division receives its referrals from citizens, police, county adult protection workers and state agencies. The division reviews all of the investigations generated by the two state licensing agencies: the Department of Health, which investigates complaints from hospitals, nursing homes and assisted living and home health agencies, and the Department of Human

Services, which investigates facilities and programs for the developmentally disabled, chemically dependent, and mentally ill, including those operated as adult foster care homes. In FY 05, the division reviewed 309 vulnerable adult cases involving Health Department investigations and 536 cases involving Department of Human Services investigations.

The staff in the division follow up on these administrative investigations to ensure that law enforcement is involved in criminal cases, and interact with city and county attorneys to request the issuance of criminal complaints for assault, abuse and financial exploitation of vulnerable adults. Division attorneys also assist local prosecutors and accept referrals to prosecute these cases around the State.

During FY 05, the Medicaid Fraud Division's efforts resulted in the conviction of eight individuals for Medicaid fraud, eight individuals for abuse or neglect of vulnerable adults, and four individuals for theft of patient funds. In addition, the division referred individuals for administrative sanctions and program exclusion. These referrals resulted in professionals losing their licenses to practice, nursing aides receiving exclusions from working in federal programs and agencies losing their ability to receive Medicaid funds. During the past fiscal year eleven program suspensions and five licensing suspensions and other restrictions were obtained.

One goal of the division is to recover Medicaid funds from providers who fraudulently bill the program. During FY 05, the division obtained a conviction, by jury, of an owner of a personal care and home and community-based services organization who billed the Medicaid program for unqualified services and services not provided. The owner was ordered to pay \$122,935.75 in Medicaid restitution and sent to state prison for 45 months.

The division also obtained a default judgment against a Medical Assistance provider in the area of adult foster care. The provider agreed to reimburse the Medicaid program \$45,900 for services that were not provided. In addition, the division participated in national settlements with pharmaceutical companies, returning \$8,236,872.18 to the State.

The division also successfully prosecuted several theft and financial exploitation cases. In one case, the division obtained a guilty plea from a guardian and trustee who financially exploited his ward -- a vulnerable adult -- by taking the ward's money, concealing the existence of the ward's trust from the court and fraudulently investing the ward's assets in his personal companies. The guardian/trustee was ordered to repay \$40,000 to the victim. In another case, the division obtained a guilty plea from the business office manager of a nursing home who stole money from resident trust funds. She was ordered to repay \$61,217.31 to the victims and was sentenced to 45 months in state prison.

The division also obtained a jury conviction of an individual who held herself out as a psychologist for theft and practicing psychology without a license. She was ordered to pay restitution in the amount of \$39,697.48 to the county with which she had entered into a service contract. In addition, she received three months of jail time.

The Medicaid Fraud Division also won an appeal from a case prosecuted in fiscal year 2003. The division continues to provide training to social services, law enforcement, and provider groups on the vulnerable adult act.

## TAX LITIGATION

The Tax Litigation Division represents the Minnesota Department of Revenue in taxpayer-initiated court cases appealing state tax assessments, seeking refunds, contesting collection actions or challenging the validity of the State's tax laws. Division attorneys appear in the Minnesota Tax Court, state district courts, federal district and bankruptcy courts, and in the state and federal appellate courts. In FY 05, the division opened 153 new cases including a number of bankruptcy matters, an eleven percent increase over the prior fiscal year. As in the past, the majority of new cases involved the State's income and sales taxes. The division continues to handle a large volume of *pro se* matters. These include tax protestors cases, in which persons assert—for reasons universally rejected by the courts—that the income tax is either unconstitutional or cannot be applied to particular forms of income. The following describes activities that occupied significant time for the division during FY 05.

- Obtained a favorable decision in the Minnesota Supreme Court holding that the MinnesotaCare tax is fairly apportioned and does not discriminate against interstate commerce in violation of the Commerce Clause of the United States Constitution.
- Obtained a favorable decision in the Minnesota Supreme Court holding that Minnesota tax assessments are independent from federal tax assessments even though Minnesota "net income" is defined as federal taxable income, and broadly upholding the Minnesota Commissioner of Revenue's authority to adjust a taxpayer's Minnesota income based on the Commissioner's independent investigation of the taxpayer.
- Obtained a partially favorable decision in the Minnesota Supreme Court holding that the State's foreign operating corporation regime does not discriminate against foreign commerce in violation of the Commerce Clause of the United States Constitution, but reversing the Commissioner of Revenue's state tax treatment of federal foreign sales corporations.
- Obtained a favorable decision in the Minnesota Court of Appeals, currently on further review, upholding a 2003 statute imposing a 35-cent per-pack fee on cigarettes sold in Minnesota by any manufacturer that has not entered into a settlement agreement with the State under which it makes payments to the State.
- Obtained a favorable ruling in the United States Bankruptcy Appellate Panel for the Eighth Circuit holding that the federal Tax Injunction Act barred the bankruptcy court from considering a purchaser-in-bankruptcy's claim which, if successful, would prevent the State from applying its three-year averaging formula to compute the taconite production tax liability of the subject mining facility.
- Obtained a favorable decision in state district court upholding the Department of Revenue's subpoena for records necessary to determine a state tax liability.

- Obtained a favorable decision in the tax court, now on appeal, upholding the Commissioner of Revenue's determination that a physician who worked and traveled in Alaska for brief periods during 1998 and 1999 remained a Minnesota resident for those years because he maintained a Minnesota homestead and had many other substantial contacts with Minnesota.
- Obtained several favorable decisions in the tax court, all now on appeal, upholding the State's rule that gambling losses may not be deducted when computing a taxpayer's alternative minimum tax liability unless the taxpayer was engaged in the business of gambling.
- Obtained several favorable decisions in federal district court, state district court, and the tax court rejecting claims of tax protestors that their income was not subject to Minnesota income tax or concluding that protestors could not shield income from state taxation by shifting it into sham trusts.
- Appeared in court in approximately 34 bankruptcy cases, more than double the number in FY 04. These cases typically involved either individual debtors who failed to file income tax returns before declaring bankruptcy or debtors challenging the State's claims in bankruptcy. The division has had substantial success in these matters.
- Appeared in court in numerous quiet title, land registration and foreclosure cases in state and federal court. Successfully defended or preserved the priority of state tax liens over the liens and judgments of other claimants. The division received notice of and reviewed approximately 140 such matters, and was able to protect the State's interest in most instances through correspondence to opposing counsel rather than through court appearances.
- Negotiated settlements where appropriate.

Tax litigation has become increasingly complex. Current areas of litigation include "nexus" claims, where a corporation does part of its business in the state through "independent contractors" or has economic but not physical "presence" here; individual residency and taxing jurisdiction cases; matters involving the correct valuation of the operating property of multi-state utilities, such as gas and oil transmission pipelines; disputes concerning the propriety of parent corporations using foreign operating corporation subsidiaries to shield income from Minnesota's corporate franchise tax and indirect sales tax audits issued to cash businesses, where a lack of business records requires the reconstruction of the taxpayers' sales through third-party records. It is anticipated that these and other issues will continue to generate significant future litigation.

## SOLICITOR GENERAL SECTION

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### APPEALS DIVISION

The Appeals Division handles felony appeals for the vast majority of the State's 87 counties. The goal of the division is to uphold convictions that are properly obtained and also to shape and develop criminal case law to enhance the protection of Minnesota's citizens.

In FY 05, the Appeals Division handled 173 state criminal appeals. Of these cases, 158 were before the Minnesota Court of Appeals and fifteen were before the Minnesota Supreme Court. Along with filing briefs and motions on these cases, attorneys in the division represented the State in 46 oral arguments before the Minnesota Court of Appeals and the Minnesota Supreme Court. The cases handled by the Appeals Division in FY 05 involved, among other crimes: murder, sexual assault, drug distribution and manufacturing, kidnapping, child sexual abuse and felony assault.

Cases won by the Appeals Division this fiscal year include the following: *State v. Bolstad* (Kanabec County, first-degree murder); *State v. Huff* (St. Louis County, first-degree murder); *State v. Palubicki* (Hubbard County, first-degree murder); *State v. Schulz* (Waseca County, first-degree murder); *State v. Carney* (Clay County, first-degree murder); *State v. Azure* (Becker County, first-degree murder); and *State v. Quick* (Norman County, first-degree murder).

In addition to handling appellate cases, division attorneys assist Attorney General prosecutors by providing legal research and preparing legal memoranda, and assist local prosecutors on legal questions. Attorneys in the division are also responsible for advising the Governor on interstate extraditions and handling property forfeiture proceedings arising from criminal conduct.

### COMMERCE DIVISION

The Commerce Division provides advice and representation to the Minnesota Department of Commerce, which is charged with regulating financial services industries in Minnesota, including insurance, banks and other financial institutions, securities, mortgage lending and the real estate industry.<sup>1</sup> The division also provides advice and representation to the Petroleum Release Tank Compensation Board (Petrofund), which is administered by the Department of Commerce. The division also provides advice and representation to the Minnesota Department of Labor and Industry, which took over regulation of the residential building contractor industry, including the Building Contractor's Recovery Fund, in 2005.

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<sup>1</sup> The Commerce Department also regulates telecommunications and energy providers, as a result of the merger between the Commerce Department and the Department of Public Service. The Telecommunications Division handles representation of the Department with respect to telecommunications and energy issues.

In 2004-2005, the division handled numerous contested cases for Commerce involving disciplinary action against licensees. As a result, the division obtained over \$262,950 in civil penalties and settlements.

During 2004-2005, the division handled a number of important cases for Commerce including the following:

- ***Recovery Fund Claims.*** The division handled 150 district court claims against the Building Contractor's Recovery Fund and the Real Estate Education, Research, and Recovery Fund. The division defended the Real Estate Education, Research, and Recovery Fund against a \$147,775.35 claim filed by a title insurance company that sought reimbursement for claims it paid arising from the fraud of its agents. Specifically, the district court granted the division's summary judgment motion because (a) the insurer was not an "aggrieved person" and (b) the insurer's subrogation claim was ineligible for recovery.
- ***Disciplinary Actions Against Mortgage Originators.*** The division commenced contested case proceedings against several mortgage originators who submitted fraudulent mortgage applications to lenders.
- ***Disciplinary Actions Against Real Estate Salespersons.*** The division defended several license denial determinations.
- ***Disciplinary Actions and Liquidation of Collection Agencies.*** The division obtained revocation orders against collection agents. The division is also assisting the Commissioner in appointing a receiver in a case involving fraudulent retention or conversion of client funds.
- ***Disciplinary Actions Against Securities Salespersons.*** The division initiated disciplinary action against securities salespersons for numerous violations, including sale of unregistered securities, sale of securities by unlicensed personnel and "selling away" without the permission of the broker dealer.
- ***Disciplinary Actions Against Residential Building Contractors.*** The division prosecuted numerous disciplinary actions of residential building contractors. Common violations include unlicensed building contractor activity, failure to satisfy judgments, failure to complete jobs and code violations.
- ***Disciplinary Actions Against Insurance Salespersons.*** The division prosecuted numerous insurance salespersons for activities including sale of fraudulent auto insurance binders, false applications, failure to obtain insurance for customers and conversion.
- ***Petroleum Tank Release Compensation Board.*** The division continued to represent the Petrofund Board in connection with requests for reimbursement in connection with petroleum product releases. The division also provided legal advice to the Petrofund staff when requested.

- **Regulatory Action Regarding State-Chartered Banks.** The division assisted the Department in obtaining the removal of bank officers engaged in unsafe and unsound practices including the extension of unsound loans to over-extended commercial borrowers. The Department also obtained agreements to reform bank boards and to provide greater oversight of banking practices.
- **Unclaimed Property Litigation.** The division successfully represented the Commissioner in district court proceedings regarding a claim alleging entitlement to unclaimed property. See Minn. Stat. §§ 345.31-345.60 (2004).

## CONSUMER ENFORCEMENT AND SERVICES DIVISIONS

The Consumer Enforcement and Services Divisions seek to protect Minnesota consumers from unfair and deceptive conduct by taking legal action against violators of Minnesota consumer protection laws. The consumer divisions consistently return restitution dollars to Minnesota consumers and recover money for the State treasury far in excess of the costs incurred in their operation. The divisions also obtain court orders halting deceptive practices.

Examples of cases handled by the Consumer Enforcement Division during the last fiscal year include the following:

- **Foreclosure Equity Stripping.** The Office performed extensive work combating equity stripping of homeowners in foreclosure who had equity in their homes. The defendants promised to save the homes of foreclosed homeowners, but instead perpetrated a scheme that transferred the home and its equity to defendants. The Office's lawsuit against Home Funding Corporation and related people settled during trial. Numerous homeowners had title to their homes returned to them as a result of the lawsuit -- several of whom had previously been evicted. In addition, the State has requested \$2,680,000 in restitution and \$2,680,000 in penalties. In the Office's lawsuit against Grant Holding, Cutler Mortgage and several individuals, homeowners also were awarded \$500,000 in restitution. In both cases, all corporate and individual defendants have been barred by court order from engaging in transactions related to foreclosures in the future. The Office also has obtained the return of title, money or other interests to individual homeowners subjected to various equity stripping schemes by others.
- **Predatory Lending.** The Office completed its lawsuit against Genesis Consulting Group and against Barnett & Associates. Genesis and related people engaged in a fraudulent program involving first-time homebuyers. Consumers were awarded approximately \$300,000 in arbitration proceedings held under a settlement of the lawsuit. Barnett & Associates engaged in fraud by promoting a phony "mortgage elimination" scam. Aitkin County District Court awarded victims of the scam \$4 in restitution, more than \$1.5 million in penalties and costs and entered an order barring defendants from engaging in the fraudulent conduct.
- **Deceptive Practices By Credit Card Issuers.** In December 2004, the Office filed a lawsuit against a major credit card issuer, Capital One Corporation, for falsely advertising

credit cards with an interest rate that is "low and fixed" and that "starts low and stays low." In fact, Capital One has raised the interest rates on its credit cards, either through "trip wires" for cardholders (such as a cardholder paying a day late) or because the company unilaterally decided to increase the rate. The suit is pending in Ramsey County District Court. The Office also obtained from the Hennepin County District Court a temporary injunction against Cross Country Bank for its highly abusive debt collection practices. The Office recently added allegations in this lawsuit related to deceptive credit card marketing practices, including offering credit cards with advertised high credit limits that few or no cardholders actually received.

- ***Abusive Debt Collection and Debt Counseling.*** In addition to continuing intensive litigation against Cross Country Bank for abusive debt collection practices, the Office filed a lawsuit against Messerli and Kramer, a local law firm. The suit alleges that Messerli engaged in unfair and illegal procedures in collecting debts owed by low-income consumers with exempt income, including many low income elderly living on social security. The suit also alleges that Messerli improperly charged debtors for attorney's fees. The Office settled its lawsuit against Allied Interstate, a nationwide debt collector with offices in Minnesota, concerning its practice of repeatedly calling consumers who disputed owing a debt. The settlement calls for a minimum of \$50,000 in payments to consumer complainants and the State, with up to \$100,000 in payments to consumers based on arbitration proceedings. The Office also has a lawsuit pending in Ramsey County District Court against JBC and Associates, a California based law firm. The suit alleges that JBC made false and misleading statements in attempting to collect old, time-barred debt that was often disputed by the consumers involved.
- ***Fraud Against Small Businesses and Nonprofit Organizations.*** Small businesses, churches and schools were the focus of the Office's lawsuit against Yellow Pages, Inc. in Ramsey County District. Defendant Yellow Pages sent these businesses and other entities checks for \$3.47 that appeared to be refunds, payments or donations. If the business or organization did not notice the fine print accompanying the check, Yellow Pages engaged in aggressive collection practices against the organization for \$177 per month for unwanted advertising services. The court ordered a temporary injunction against Yellow Pages banning all such solicitations in Minnesota and preventing any collections against companies or organizations that had cashed the \$3.47 checks.
- ***Telemarketing and Electronic Fund Transfers.*** The Office settled a case against First Premier Bank for processing electronic fund transfers by telemarketers who engaged in fraudulent and deceptive practices. The case, led by this Office but also including the Attorneys General of Iowa and South Dakota, is the first case to address the responsibilities of banks to monitor and police electronic charges to customer accounts by telemarketers -- an area long-associated with consumer fraud, especially against the elderly. The settlement includes an injunction requiring First Premier to prescreen companies desiring to make such charges and to closely monitor charge reversal rates for evidence of deception and fraud. The settlement also included \$110,000 in payments to the State of Minnesota.

- ***Employment Agency Deception.*** The Office settled its lawsuit against Professional Marketing Services, doing business as Bernard Haldane. The company charged thousands of dollars to consumers who were deceptively told that Bernard Haldane had access to “hidden” jobs. The settlement provides \$300,000 in restitution to consumers who filed complaints against the company for its sales practices, and prevents further operation in Minnesota by the defendants.
- ***Automobile Dealers.*** The Office settled a July 2004 lawsuit filed in U.S. District Court against Luther Brookdale. Luther used information about consumers from credit reporting agencies in sending solicitations that looked deceptively like they were from the United States Bankruptcy Court and guaranteed by the State of Minnesota. The suit alleged that Luther’s ads and conduct violated the federal Fair Credit Reporting Act and Minnesota consumer protection laws. The settlement required Luther to pay \$250,000 to the State.
- ***Exploitation of Vulnerable Adults.*** The Office also completed a lawsuit in Chisago County District Court against a large landlord, Marge Allen, doing business as Franconia. Several elderly tenants received a rebate for improper increases in rent in a building subject to federal rules for low-income elderly housing. The Hennepin County District Court awarded judgment for restitution to several African immigrant nurses in a lawsuit brought by the Office against Divine HealthCare for violations of Minnesota’s Immigrant Services Act.
- ***Cell Phone Billing and Sales Practices.*** The Office also settled a suit in St. Louis County District Court against Cell One alleging that the company systematically billed consumers for charges not owed when the consumers received incoming calls within their home rate coverage area. The settlement included more than \$130,000 for consumer restitution.
- ***Travel Clubs.*** The Office brought an action against Global Vacations and related entities for violating the high-cost travel club law. The suit was settled and resulted in more than \$1.8 million in cancelled payments and refunds to approximately 375 consumers.
- ***Willis Group Holdings.*** The Office conducted an investigation into the insurance industry’s compensation practices, including contingency commissions, bid-rigging and the steering of business by brokers. The investigation focused on the practices of Willis Group Holdings (Willis), the nation’s third largest insurance broker. After Willis refused to produce documents, the Office brought a motion to compel. Subsequently, Willis simultaneously settled with this Office and the State of New York. Willis agreed to a nationwide settlement of \$50 million, plus payments to Minnesota clients of an additional \$1 million over the pro-rata payments that will be made to those clients under the nationwide settlement.

The Consumer Services Division assists consumers, businesses and other organizations, and citizens who contact it for advice about their legal rights.

By working to assist citizens and effect voluntary settlements between consumers and other parties, the division often eliminates the need for costly and time-consuming litigation for both sides of the transaction. An incalculable amount of economic loss is prevented by advice given to citizens who contact this Office.

## **PUBLIC SAFETY/GAMBLING DIVISION**

The Public Safety/Gambling Division represents the Commissioner of Public Safety at thousands of implied consent hearings each year in which drivers found to have been drunk and unsafe lose their licenses. The division is responsible for defending actions that resulted in the collection of driver's license reinstatement fees paid to state government over the last fiscal year. The division's litigation of overweight truck violations also resulted in substantial fines paid to the State. Efforts by the division during the last fiscal year to reduce deaths, injuries, and property damage on Minnesota's streets and highways included:

- Handled over 4,700 district court implied consent proceedings challenging the revocations of driving privileges under Minn. Stat. § 169A.50-53.
- Defended the state against numerous constitutional and other challenges to the DWI, implied consent, traffic and other public safety laws.
- Provided satellite teleconference training on DWI procedures and traffic safety laws for law enforcement officers throughout the State of Minnesota.
- Published the Attorney General's 2005 DWI/IC Elements handbook, utilized statewide by prosecutors, judges, defense attorneys and law enforcement professionals.
- Handled over 180 district court challenges to other driver's license cancellations, withdrawals, revocations, suspensions and license plate impoundments under Minn. Stat. § 171.19.
- Argued appeals to the Minnesota Court of Appeals and Minnesota Supreme Court resulting from district court appearances involving the revocation, suspension, cancellation or withdrawal of driving privileges.

The division also provides legal services to the Commissioner of Public Safety and various divisions of the Department of Public Safety including the State Patrol, Bureau of Criminal Apprehension, State Fire Marshal's Office, Office of Pipeline Safety, Office of Homeland Security and Emergency Management, Office of Justice Programs, Office of Traffic Safety, and the Driver and Vehicle Services Division. Petitions for expungement of criminal records served on the Bureau of Criminal Apprehension are monitored and challenged, where appropriate, by the division. Additionally, regulation of the private detective and security industry is enhanced by the division's representation of the Private Detective and Protective Agent Services Board.

The division continues to face a significant challenge from a dramatically increased workload. Driver's license revocations under the implied consent law are being challenged at an increasing rate. For example, in 1993 a mere six percent of all revocations were challenged in court. By 1997, the rate of challenges rose to ten percent. In FY 05, nearly fourteen percent of all drivers' license revocations were challenged in court. Today's challenge rate is the result of the toughening of DWI laws by the legislature over the past few years including the ability to use an implied consent revocation to impound license plates, forfeit motor vehicles and enhance subsequent criminal offenses to gross misdemeanor and felony violations. Because drivers have more at stake from an alcohol-related license revocation on their driving records, they are more willing to challenge the underlying revocations in district and appellate courts.

For example, in FY 96, the Division defended 2,121 implied consent cases in district court. In FY 05, it handled 4,702 implied consent cases, a 122 percent increase from FY 96. Implementation of the felony DWI law and increased license reinstatement fees to fund felony DWI procedures continue to increase division caseload. Moreover, the Minnesota Supreme Court's recent ruling in *Fedziuk v. Commissioner of Public Safety*, 696 N.W.2d 340 (Minn. 2005), resulted in a sharp increase in petition filings during the later half of FY 05. The Court's mandate that all implied consent hearings be held within 60 days of filing of the petition for judicial review will present a significant challenge for both the district courts and the division in FY 06.

The division also provides legal advice and representation to the Gambling Control Board, the Minnesota Racing Commission, the Minnesota State Lottery and the Alcohol and Gambling Enforcement Division of the Department of Public Safety. These agencies have thousands of licensees and conduct numerous investigations each year. Many of these investigations result in contested case hearings requiring representation from this division. This division provides advice to the Alcohol and Gambling Enforcement Division on issues relating to illegal liquor sales, illegal gambling devices, and Indian gaming. The division also represents that agency in taking action against manufacturers and distributors of liquor and gambling equipment.

With regard to the Minnesota Racing Commission, this division represents racetrack stewards in appeals of disciplinary action taken against horse owners, trainers, and jockeys. The division also provides representation as it relates to the commission's regulation of the card club at Canterbury Park. The approved license application for the North Metro Harness Racetrack in Anoka County has kept the division busy during the last fiscal year and is expected to significantly increase division workload during FY 06. The division provides the State Lottery with a wide range of advice, from internet issues to lottery retailer contract suspensions, and represents the client in disciplinary hearings against lottery retailers and other licensees. A committee of the Gambling Control Board meets monthly with a number of licensees to discuss alleged violations of statutes and rules. The division provides representation at these settlement meetings, drafts the appropriate orders, and litigates the cases before the Office of Administrative Hearings and the Minnesota Court of Appeals. The division's representation of the Racing Commission, Gambling Control Board and the Alcohol and Gambling Enforcement Division has resulted in recovery of fines and costs in excess of \$50,000 during FY 05.

## **TRIAL DIVISION**

The Trial Division provides prosecutorial assistance to county attorneys and local law enforcement in prosecuting serious, violent, drug and gang-related crimes and handles the civil commitment of dangerous sex offenders. In addition, the division provides training for police officers and prosecutors.

The division prosecutes serious crimes in trial courts throughout Minnesota when requested by a county attorney under Minn. Stat. § 8.01. Representative work during FY 05 included:

- Prosecuting violent and serious crimes throughout the state, including the following:

Prosecuted John Jason McLaughlin for the shooting at Rocori High School in which students Seth Bartell and Aaron Rollins were killed. The prosecution involved a grand jury proceeding, a certification to adult court, an appeal of the certification and a trial in Stearns County District Court. McLaughlin was convicted of first degree murder and second degree murder. He is serving a life sentence.

Convicted John Heden for murder in the first degree while committing criminal sexual conduct against his infant son in Pennington County. Heden was sentenced to life in prison without the possibility of parole.

Convicted Charles Jacobson for one count of first degree premeditated murder and two counts of attempted murder in Hubbard County. Jacobson shot at family members because of an argument with his sister over a fishing boat, and killed his nephew Dustin Ellenson. Jacobson is serving a life sentence for the murder conviction, and sentences of 210 months and 203 months for the attempted murder convictions.

Convicted two defendants for first degree murder during the course of a kidnapping of Robert Berry, Jr. in the Lower Sioux Community in Redwood County. Five defendants have been charged as accomplices in the murder. Morris Pendleton, Jr. and Keith Crow are both serving sentences of life imprisonment without the possibility of parole. Charges remain pending against three other accomplices.

Convicted Ardelle Manthey of murder in the first degree for the shooting death of her husband in Aitkin County. Manthey is serving a life sentence.

Convicted Suzanne McNulty of murder in the second degree for the shooting of her boyfriend, Irvin Berg, in Jackson County. McNulty is serving a 180-month prison sentence.

Convicted Victor Rodriguez of manslaughter in the second degree for the shooting death of Dennis Goodman during an argument at a party in Hubbard County.

Convicted Bruce Gray of two counts of second-degree assault for shooting at the home of Assistant Beltrami County Attorney Randall Burg and his wife, Professor Carol Nielsen.

Conducted seven grand jury proceedings and obtained murder indictments in counties throughout the State.

- Providing legal advice and prosecution support to the Minnesota Gang Strike Force.
- Continuing the Attorney General's strong offensive against the expanding problem of methamphetamine use in outstate Minnesota by prosecuting makers and dealers of meth and other drugs in 23 counties.

Also, pursuant to Minn. Stat. § 8.01, division attorneys handle civil commitment hearings referred by counties in outstate Minnesota. The number of these commitments and complexity of the cases increased significantly during the latter half of FY 04 and remained high throughout FY 05.

Trial Division attorneys assist approximately 80 of Minnesota's 87 counties in civil commitment hearings involving dangerous sexual predators, upon the request of the county attorney. When a county attorney decides to proceed with a civil commitment petition, division attorneys are available to assist the county attorney in all aspects of litigation, including preparation of the commitment petition, handling of pre-trial matters and litigation of the case at the commitment hearing and on appeal

The workload of the Trial Division greatly expanded in FY 04 and remained high during FY 05, due to certain actions of the Minnesota Department of Corrections

First, Minn. Stat. § 244.05, subd. 7 requires the Corrections Department to make a preliminary determination of whether a petition for civil commitment of a sex offender may be appropriate. The statute further requires the department to make, and to notify the county of, its determination at least one year prior to an offender's release from incarceration. In the past, the Department interviewed sex offenders and rendered an expert preliminary determination to the county of whether a petition for civil commitment might be appropriate. The county was then able to consider this expert opinion in deciding whether good cause existed to file a civil commitment petition. Beginning in late 2003, the department stopped making such expert preliminary determinations. As a result division attorneys were required to establish three two-person panels of psychologists with expertise in civil commitment matters to render an expert opinion to the county on whether a petition for civil commitment was appropriate in a particular case and to testify at any resulting hearing. Upon the request of a county attorney, division attorneys assist the county in petitioning the court for authority to access an offender's records, gathering the offender's voluminous records and forwarding those records to the expert panel for review.

Second, as noted above, the statutes also require the department to notify the county of a sex offender's upcoming release from incarceration one year prior to the release. The purpose of the one-year notice requirement is to ensure that a county has sufficient time to file a petition and have it adjudicated prior to an offender's release from incarceration. The department has not provided the statutorily-required notice. Indeed, in FY 05 the department gave counties in some cases only a few months' notice of a sex offender's release from incarceration. Because the

department has not complied with the statute, counties, and the division attorneys who assist them, are subjected to very tight time constraints in handling civil commitment cases. They often must seek an emergency hold order from a court to prevent an offender from being released from incarceration during the pendency of a commitment case. This not only jeopardizes a county's ability to get an offender committed, but it also disrupts the workflow of the courts and shifts the cost of housing the offender during the pendency of the commitment case to the county.

Third, the Trial Division has become involved in the Peter John Jones case representing *Amicus Curiae* regarding Indian law sovereignty as it applies to predatory offender registration laws.

Division attorneys handled several cases relating to petitions for *habeas corpus* by individuals civilly committed as sexual predators. As the population of committed sexual predators increases, the number of petitions for *habeas corpus* from the Department of Human Services' regional treatment centers will continue to grow.

The division's Civil Commitment Team also handles administrative hearings required by the Community Notification Act when a registered sex offender challenges the Department of Corrections' assessment of the offender's level of danger upon release from incarceration. Each month, the division handles several such cases, which affect the type of notice given to the community into which the sex offender will be released. The division also advises the BCA about registration issues and DNA collection issues, and the Department of Corrections on community notification issues.

The division provides training to prosecutors and law enforcement officers on a variety of issues, provides advice to several state agencies' investigative units, participates in the Environmental Crimes Steering Committee, reviews potential criminal violations of environmental law and assumes an active role in coordinating law enforcement efforts related to computer related crimes and fraud.

Additionally, the division trains law enforcement officers and prosecutors throughout the state on such topics as: sex offender commitments, predatory offender registration, stalking and harassment laws, child exploitation laws, firearms laws, narcotics investigations, search and seizure, suspect interrogation, evidence, wiretaps and electronic surveillance, working with grand juries, forfeiture, gang investigation and prosecution and trial advocacy.

**APPENDIX A: SERVICE HOURS**  
**By Agency or Political Subdivision for FY 2005**

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<b>Partner Agencies</b>				
Administration-Risk Management		1,729.8		\$ 161,437.50
AURI		0.0		\$ -
Corrections (3)	3,111.0	3,077.6	\$ 269,925.00	\$ 247,671.50
Education Department (3)	2,256.0	1,707.6	\$ 225,600.00	\$ 167,830.50
Gambling Control Board	800.0	373.7	\$ 80,000.00	\$ 37,370.00
Health	7,275.0	6,633.1	\$ 660,000.00	\$ 636,647.50
Higher Education Services Office (3)	30.0	29.4	\$ 3,000.00	\$ 2,940.00
Housing Finance Authority	5,250.0	5,979.6	\$ 525,000.00	\$ 597,838.50
Human Services	24,257.5	22,550.0	\$ 2,335,750.00	\$ 2,146,496.00
Iron Range Resources & Rehabilitation (3)	2,250.0	2,250.0	\$ 225,000.00	\$ 225,000.00
Medical Practices Board	11,360.0	12,777.6	\$ 824,985.00	\$ 905,898.00
Minnesota Racing Commission	410.0	1,123.5	\$ 41,000.00	\$ 109,929.00
Minnesota State Retirement System		237.3		\$ 23,730.00
MnSCU	10,950.0	9,277.7	\$ 1,018,500.00	\$ 860,675.00
Natural Resources	8,410.0	6,025.6	\$ 809,950.00	\$ 590,500.00
Petro Board	150.0	104.6	\$ 15,000.00	\$ 10,460.00
Pollution Control	19,527.0	20,762.7	\$ 1,885,200.00	\$ 2,006,412.00
Public Employees Retirement Association		1,132.6		\$ 113,251.00
Public Safety (3)	1,500.0	1,500.0	\$ 150,000.00	\$ 150,000.00
Teachers Retirement Association		178.7		\$ 17,834.00
Transportation	23,883.0	20,067.8	\$ 2,206,500.00	\$ 1,934,127.50
<b>TOTAL PARTNER AGENCIES</b>	<b>121,419.5</b>	<b>117,518.9</b>	<b>\$ 11,275,410.00</b>	<b>\$ 10,946,048.00</b>
<b>Specialized Boards</b>				
Accountancy Board		144.1		\$ 12,227.50
Animal Health Board		65.9		\$ 6,590.00
Architecture Board		126.6		\$ 12,660.00
Assessors Board		0.1		\$ 10.00
Barber Board		189.6		\$ 17,844.00
Client Security Board		851.8		\$ 66,586.00
Crime Victims Reparations Board		119.0		\$ 11,540.00
Electricity Board		179.5		\$ 17,927.50
Land Exchange Board		29.8		\$ 2,980.00
Peace Officers Standards and Training Board		275.0		\$ 27,396.50
Private Detective Board		107.6		\$ 10,760.00
School Administrators Board		162.7		\$ 16,207.00
State Fair Board		20.8		\$ 2,080.00
State Investment Board		479.4		\$ 46,558.50
Teaching Board		770.8		\$ 77,035.00
Zoological Board		16.4		\$ 1,023.50
<b>SUBTOTAL</b>		<b>3,539.1</b>		<b>\$ 329,425.50</b>
<b>Health Boards</b>				
Behavioral Health & Therapy Board		796.6		\$ 79,345.00
Chiropractic Board		953.2		\$ 75,943.00
Dentistry Board		3,503.0		\$ 245,540.00
Dietetics & Nutrition Practice Board		1.9		\$ 190.00
Emergency Medical Services Regulatory Board		304.7		\$ 26,528.00
Health Professionals Services Program		38.1		\$ 3,810.00
Marriage & Family Therapy Board		96.7		\$ 6,524.50
Nursing Board		6,216.8		\$ 462,051.50
Nursing Home Administrators Board		124.5		\$ 9,885.00
Optometry Board		10.2		\$ 1,020.00
Pharmacy Board		388.9		\$ 28,679.50
Physical Therapy Board		236.6		\$ 16,838.00
Podiatry Board		135.8		\$ 12,072.50
Psychology Board		1,801.4		\$ 138,650.00
Social Work Board		560.2		\$ 35,630.50
Veterinary Medicine Board		976.7		\$ 78,518.00
<b>SUBTOTAL</b>		<b>16,145.3</b>		<b>\$ 1,221,225.50</b>
<b>Higher Education</b>				
Higher Education Facilities Authority		8.8		\$ 880.00
Higher Education Services Office (3)		371.4		\$ 36,888.00
<b>SUBTOTAL</b>		<b>380.2</b>		<b>\$ 37,768.00</b>

**APPENDIX A: SERVICE HOURS**  
**By Agency or Political Subdivision for FY 2005**

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<i>Other Executive Branch Agencies</i>				
Administration Department		1,819.7		\$ 169,829.00
Administrative Hearings Office		1.8		\$ 175.50
Agriculture Department		470.5		\$ 46,793.50
Amateur Sports Commission		9.2		\$ 920.00
Asian Pacific Minnesota Council		0.5		\$ 50.00
Archaeologist Office		0.1		\$ 10.00
Campaign Finance Board		473.5		\$ 39,875.50
Capitol Area Architectural Planning Board		55.5		\$ 5,550.00
Center for Arts Education		30.1		\$ 2,605.00
Commerce Department		8,207.0		\$ 819,260.00
Continuing Legal Education Board		35.9		\$ 3,113.00
Corrections Department (3)		5,332.7		\$ 516,818.00
Corrections Department/Community Notification		402.7		\$ 31,922.50
Disability Council		4.0		\$ 346.00
Employment & Economic Development Department		1,438.7		\$ 119,880.50
Education Department (3)		744.0		\$ 74,400.00
Employee Relations Department		147.6		\$ 14,562.00
Environmental Assistance Office		464.9		\$ 46,490.00
Environmental Quality Board		1,103.4		\$ 107,055.00
Executive Council		2.3		\$ 230.00
Faribault Academies		11.3		\$ 860.00
Finance		316.9		\$ 30,763.00
Governor's Office		235.7		\$ 23,547.50
Historical Society		27.7		\$ 2,770.00
Human Rights Department		1,768.8		\$ 167,101.50
Iron Range Resources & Rehabilitation (3)		880.7		\$ 86,810.00
Judiciary Courts		1,375.0		\$ 136,208.50
Labor and Industry Department		5,195.5		\$ 517,349.50
Law Examiner's Board		129.8		\$ 12,980.00
Lawyer's Professional Responsibility Board		187.6		\$ 18,760.00
Legislative Auditor		0.1		\$ 10.00
Legislature		50.6		\$ 4,632.50
Mediation Services Bureau		122.7		\$ 12,270.00
Military Affairs Department		148.6		\$ 13,838.50
Minnesota Commission Serving Deaf & Hard of Hearing People		0.6		\$ 60.00
Minnesota Gang Strike Force		202.8		\$ 20,280.00
Minnesota Supreme Court		2.0		\$ 200.00
Ombudsman for Mental Health/Retardation Office		49.6		\$ 4,847.50
Ombudsperson for Families		8.4		\$ 840.00
OSHA Review Board		28.0		\$ 1,702.00
Pardon Board		10.0		\$ 1,000.00
Public Defender, Local		140.9		\$ 13,932.50
Public Defender, State		83.7		\$ 8,370.00
Public Safety Department (3)		23,912.1		\$ 2,091,865.50
Public Utilities Commission		4,705.4		\$ 468,524.00
Revenue Department		8,644.0		\$ 861,871.00
Rural Finance Authority		10.8		\$ 1,080.00
Secretary of State		338.3		\$ 33,726.50
Sentencing Guidelines Commission		29.0		\$ 2,900.00
State Arts Board		22.2		\$ 2,220.00
State Auditor		60.5		\$ 6,032.00
State Court Administrator		49.4		\$ 4,940.00
State Lottery		44.8		\$ 4,475.50
Strategic and Long Range Planning Office		139.1		\$ 13,910.00
Veterans Affairs Department		6.4		\$ 640.00
Veterans Homes Board		474.0		\$ 42,013.50
Water & Soil Resources Board		486.5		\$ 48,650.00
<b>SUBTOTAL</b>		<b>70,643.6</b>		<b>\$ 6,661,866.50</b>

**APPENDIX A: SERVICE HOURS**  
**By Agency or Political Subdivision for FY 2005**

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<b>OTHER GOVERNMENT</b>				
Local: Aitkin County Attorney		914.0		\$ 65,277.50
Local: Beltrami County Attorney		207.8		\$ 18,089.00
Local: Benton County Attorney		12.5		\$ 1,250.00
Local: Big Stone County Attorney		11.4		\$ 1,140.00
Local: Carlton County Attorney		20.3		\$ 1,341.50
Local: Chippewa County Attorney		9.0		\$ 495.00
Local: Chisago County Attorney		8.6		\$ 860.00
Local: Clay County Attorney		10.0		\$ 1,000.00
Local: Cottonwood County Attorney		487.2		\$ 38,055.00
Local: Dodge County Attorney		423.9		\$ 31,342.50
Local: Freeborn County Attorney		9.1		\$ 910.00
Local: Houston County Attorney		162.1		\$ 14,914.00
Local: Hubbard County Attorney		961.9		\$ 75,656.50
Local: Itasca County Attorney		9.5		\$ 950.00
Local: Jackson County Attorney		61.7		\$ 4,541.00
Local: Kanabec County Attorney		525.5		\$ 43,311.50
Local: Kandiyohi County Attorney		252.5		\$ 25,250.00
Local: Koochiching County Attorney		215.3		\$ 18,020.00
Local: Lincoln County Attorney		144.1		\$ 11,372.50
Local: Marshall County Attorney		18.8		\$ 1,880.00
Local: Mille Lacs County Attorney		60.5		\$ 6,050.00
Local: Morrison County Attorney		11.5		\$ 1,150.00
Local: Mower County Attorney		1,440.7		\$ 122,312.50
Local: Nicollet County Attorney		73.0		\$ 7,300.00
Local: Nobles County Attorney		62.0		\$ 6,200.00
Local: Olmsted County Attorney		16.2		\$ 1,620.00
Local: Pennington County Attorney		604.2		\$ 50,920.50
Local: Redwood County Attorney		1,230.3		\$ 94,113.00
Local: Rice County Attorney		97.0		\$ 7,495.00
Local: Roseau County Attorney		19.5		\$ 1,950.00
Local: Sherburne County Attorney		788.0		\$ 57,425.00
Local: Sibley County Attorney		14.9		\$ 1,490.00
Local: Stearns County Attorney		255.2		\$ 23,981.00
Local: Swift County Attorney		450.1		\$ 37,652.50
Local: Todd County Attorney		185.4		\$ 15,219.00
Local: Wright County Attorney		122.2		\$ 11,140.00
Local: Various Cities		127.8		\$ 12,780.00
Local: Various School Districts		71.3		\$ 7,130.00
Local: Townships/Associations/Other Local Governments		21.6		\$ 2,160.00
Local: Various Counties Psychopathic Personalities Commitments		12,630.4		\$ 1,015,432.00
Various Counties/Criminal Appeals		13,127.4		\$ 1,297,525.50
<b>SUBTOTAL</b>		<b>35,874.4</b>		<b>\$ 3,136,702.00</b>
<b>TOTAL NON-PARTNER AGENCIES SUBDIVISIONS</b>		<b>126,582.6</b>		<b>\$ 11,386,987.50</b>
<b>TOTAL PARTNER/SEMI-PARTNER AGENCIES (from page A-1)</b>		<b>117,518.9</b>		<b>\$ 10,946,048.00</b>
<b>TOTAL NON-PARTNER AGENCIES SUBDIVISIONS</b>		<b>126,582.6</b>		<b>\$ 11,386,987.50</b>
<b>GRAND TOTAL HOURS/EXPENDITURES (4)</b>		<b>244,101.5</b>		<b>\$ 22,333,035.50</b>
Notes:				
(1) The projected hours of service were agreed upon mutually by the partner agencies and the AGO. Actual hours may reflect a different mix of attorney and legal assistant hours than projected originally.				
(2) Billing rates: Attorney \$100.00 and Legal Assistant \$55.00.				
(3) A number of agencies signed agreements for a portion of their legal services.				
(4) Not all AGO expenditures are included in M.S. 8.15 reporting. This amount does not include Civil Enforcement and Medicaid Fraud legal services.				

## APPENDIX B: LEGAL SERVICES CONTRACTS

There are two types of contracts between State agencies and outside law firms: special counsel and bond counsel.

### Special Counsel Appointments

The Office has been very successful in reducing the use of outsourced legal services. Even though the Attorney General's Office was 50% larger in 1999 than it is today, it has almost eliminated the need for special appointments.

With the exception of the Department of Employee Relations, this Office has successfully reduced the cost of outsourced legal services from \$581,678 in 1997 to \$58,773 in 2004, a reduction of over 90 percent. If the Department of Employee Relations is included, the Office has reduced the cost of outsourced legal services from \$589,192 in 1997 to \$238,687 in 2004, a reduction of over 50 percent.

Agency	1997	1998	1999	2000	2001	2002	2003	2004
DOA	\$146,391	\$145,983	\$26,268	\$80,159	-0-	-0-	-0-	-0-
AGO	\$114,041	\$8,915	\$28,653	-0-	\$29,895	-0-	-0-	-0-
DOCFL	\$180,333	\$599,812	\$649,832	\$127,029	-0-	-0-	-0-	-0-
DOC	-0-	-0-	-0-	-0-	\$128,210	\$21,067	-0-	-0-
DHS	\$23,857	\$14,942	\$18,236	\$25,379	-0-	-0-	-0-	-0-
DOLI	\$354	\$142	\$39,459	\$44,137	\$553	\$26,877	\$21,299	\$25,891
MnSCU	\$28,300	\$8,383	\$74,543	\$53,410	\$25,536	\$49,752	\$25,416	\$8,609
POSTB	\$52,182	\$2,852	-0-	-0-	-0-	-0-	-0-	-0-
PDB	-0-	\$8,426	\$3,530	-0-	-0-	-0-	-0-	-0-
DPS	\$24,960	\$25,353	\$77,577	\$2,358	-0-	-0-	-0-	-0-
DPS	-0-	\$6,028	\$3,623	-0-	-0-	-0-	-0-	-0-
PUC	\$6,714	-0-	-0-	-0-	-0-	-0-	-0-	-0-
SBI	-0-	-0-	-0-	\$8,660	-0-	-0-	-0-	-0-
SC	-0-	\$2,123	\$15,665	\$74,729	\$196,443	\$172,837	\$51,519	\$24,273
DOT	\$4,546	\$41,146	\$26,263	-0-	-0-	-0-	-0-	-0-
<b>Total</b>	<b>\$581,678</b>	<b>\$864,105</b>	<b>\$1,143,649</b>	<b>\$415,861</b>	<b>\$380,637</b>	<b>\$270,533</b>	<b>\$98,234</b>	<b>\$58,773</b>
Even if DOER is included, this Office has been very successful in reducing outsourced legal services.								
DOER	\$7,514	\$9,664	\$51,408	\$54,261	\$141,333	\$239,476	\$206,816	\$179,914
<b>Total</b>	<b>\$589,192</b>	<b>\$873,769</b>	<b>\$1,195,057</b>	<b>\$470,122</b>	<b>\$521,970</b>	<b>\$510,009</b>	<b>\$305,050</b>	<b>\$238,687</b>

## Bond Counsel

The second area where law firms are utilized is as bond counsel. In order for bonds issued by the State of Minnesota to be readily marketable, the investment market requires that law firms recognized as bond counsel be utilized by the issuer. The following lists the fees and costs for bond counsel for FY05.

<b>SPECIAL ATTORNEY EXPENDITURES FOR BOND COUNSEL FY 2005, By AGENCY</b>	
<b>AGENCY</b>	<b>Amount</b>
Agricultural and Economic Development Board	\$ 49,261.88
Employment and Economic Development	\$137,763.70
Finance	\$ 42,480.26
Higher Education Facilities Authority	\$211,141.11
Higher Education Services Office	\$ 85,567.10
Housing Finance Agency	\$347,807.05
IRRRA	\$ 4,553.09
MnSCU	\$ 10,229.94
Rural Finance Authority	\$ 1,741.33
<b>TOTAL</b>	<b>\$885,992.37</b>

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