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

**ANNUAL REPORT REQUIRED BY**

**Minnesota Statute Section 8.15,  
Subdivision 4 (2006)**

**Fiscal Year 2007**

# TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
CIVIL PROTECTION SECTION .....	2
Complex Litigation Division .....	2
Consumer Services Division.....	2
Residential Utilities Division.....	4
CIVIL REGULATION SECTION .....	9
Environmental Protection Division.....	9
Health Investigations Division.....	11
Health Licensing Division .....	12
Labor/Corrections/Human Rights Division .....	13
Tax Litigation & Education Division .....	14
HEALTH AND HUMAN SERVICES SECTION .....	19
Charities Division .....	19
Health/Antitrust Division.....	22
Human Services Division .....	26
Medicaid Fraud Division .....	28
PUBLIC ENFORCEMENT SECTION.....	30
Appellate Division .....	30
Public Protection Division .....	31
Public Safety Division .....	33
Telecommunications & Energy Division.....	35
SOLICITOR GENERAL SECTION .....	40
Civil Litigation Division .....	40
Public Finance/Natural Resources Division .....	42
Transportation Division .....	48
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 2007 (FY 07).

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

# CIVIL PROTECTION SECTION

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## COMPLEX LITIGATION AND CONSUMER SERVICES DIVISION

The Complex Litigation and Consumer Services Divisions, sometimes coordinating efforts with other divisions of the Office, seek to protect Minnesota consumers from unfair and deceptive conduct by taking legal action against violators of Minnesota consumer protection laws and laws protecting consumers from unfair, discriminatory and other unlawful practices in business, commerce or trade. The divisions consistently return restitution dollars to Minnesota consumers. The divisions also obtain court orders halting unfair deceptive practices that provide consumers protection on an ongoing basis. The monetary effect of enjoining deceptive practices on a going forward basis provide immeasurable monetary value to Minnesota consumers.

Examples of complex litigation cases handled by the Office during the last fiscal year include the following:

- ***Unsuitable Sales of Living Trusts and Annuities to Seniors.*** The Office brought lawsuits against Allianz Life Insurance Company of North America, American Equity Investment Life Insurance Company, and American Family Legal Plan. The lawsuit against Allianz alleges that Allianz violated Minnesota suitability and consumer protection laws by marketing and selling unsuitable long-term deferred annuities to seniors and by misrepresenting the terms of its annuities. Similarly, the lawsuit against American Equity alleges that American Equity violated Minnesota suitability and consumer protection laws by marketing and selling unsuitable long-term deferred annuities to seniors and by misrepresenting the terms of its annuities. The lawsuit against American Family Legal Plan alleges that American Family Legal Plan sold seniors unnecessary living trusts and that when the trust documents were delivered by affiliated insurance agents of American Family Legal Plan, the affiliated agents sold seniors unsuitable annuities.
- ***Foreclosure Equity Stripping.*** The division continues to combat the problem of equity stripping of homeowners in foreclosure. Through its efforts, the division has obtained the return of title, money or other interests to numerous individual homeowners subjected to various equity stripping schemes as well as assisted hundreds of consumers to remain in their homes after the homes were set to go into foreclosure. The division continues to administer restitution payments in connection with the Grant Holding equity stripping case, which settled in June 2005 and currently is proceeding in an ongoing lawsuit against a corporation and individual participants that is set to go to trial next fiscal year.
- ***Predatory Lending.*** Minnesota was one of the lead states in the multi-state investigation of Ameriquest Mortgage Co. for abusive and deceptive predatory subprime mortgage lending practices, including misleading consumers about loan costs and terms, misleading consumers about points and fees they would be charged, obtaining falsely inflated appraisals, and abusing the stated income process, among other practices. The division

was instrumental in negotiating a multistate settlement of \$325 million to consumers, at least \$295 million of which will be distributed to consumers as restitution. Minnesota received approximately \$18 million from this settlement and is returning this money to consumers in the form of restitution.

- ***Deceptive Practices by Credit Card Issuers.*** The division charged a bank with engaging in deceptive advertising practices and abusive collections practices. The division entered into a Stipulation and Consent Judgment with the bank that provides significant injunctive relief.
- ***Telemarketing Fraud.*** The division investigated the telemarketing and sales practices of a magazine subscription seller. The division found that, among other things, the company allegedly engaged in multiple violations of the FTC's Telephone Solicitation Rule and other state and federal telemarketing laws, and misrepresented that it had an existing business relationship with the person called. The division entered into an Assurance of Discontinuance with the magazine subscription seller that provided injunctive relief barring the alleged deceptive practices and provided restitution and civil penalties in the amount of \$200,000.
- ***Fraudulent Direct Mail Solicitations.*** The division participated in a multistate investigation into provider of internet yellow pages directory services that used direct mail solicitations enclosing live checks. The fine print on the back of the checks stated that cashing the checks constituted an agreement to purchase the company's services and to authorize billing for the same each month. The company targeted small businesses, schools, churches and other organizations. The multistate finalized a settlement with the company that provided for restitution to victimized organizations and injunctive relief, including a ban on live check solicitations.
- ***Manufactured Home Parks.*** The division obtained a temporary injunction in its case against a manufactured park owner. The suit alleged that the manufactured park owner deceptively sold and financed mobile home purchases without a license or title to the homes, failed to transfer proper title to the new owners, brought illegal eviction actions, and engaged in other unlawful practices. The temporary injunction requires the owner to sell the manufactured home park to a non-profit cooperative organization which will manage the park, and convey title of the homes to the residents as well as a civil penalty.
- ***Abusive Home Sales Practices.*** The division investigated a large realty company and one of its agents when the division learned that the agent took advantage of dozens of Hispanic consumers who predominantly communicated in Spanish. The agent sold these consumers homes with substantial repair issues and misled them about the condition of the properties and their right to inspections. The agent also failed to disclose that some of the homes he was selling were actually owned by him. Through a settlement, this division obtained \$375,000 to distribute to consumers as restitution and to programs which provide homeownership education to consumers who do not speak English.

- ***Abusive Sales Practices in the Home Improvement Industry.*** The Office filed a claim in the bankruptcy case of the Consumers Trust pursuant to the consumer enforcement laws of Minnesota in order to protect the interests of consumers who were defrauded. The consumers complained that they were encouraged to purchase large ticket home improvement items such as hot tubs or additions to their homes and were provided vouchers for the full purchase prices of the items under a program run by Consumers Trust. The program terms promised the consumers that after registering their vouchers and complying with several conditions over the period of three years, they would receive the full face value of the vouchers. The conditions, however, were nearly impossible to comply with and there was not enough money to pay the consumers. This division filed a proof of claim that will help hundreds of Minnesota consumers who did not file their own proofs of claim to recover a portion of the face value of their vouchers, which total in excess of \$1.3 million.
- ***Student Loans.*** On March 23, 2007, Attorney General Lori Swanson sent a letter to Minnesota college presidents and high school principals, informing them of several questionable practices regarding publication of “preferred lender lists” by Minnesota colleges. Between March and May of 2007, this Office sent Civil Investigative Demands to several Minnesota colleges as well as providers of student loans. The responses to those CID’s demonstrated that three separate Minnesota colleges had signed revenue-sharing agreements with providers of student loans in exchange for listing those providers as “preferred lenders” in documents provided to students. On May 15, 2007, this Office, together with the New York Attorney General, signed an Assurance of Discontinuance with one Minnesota college. The investigations of the two remaining Minnesota colleges continues.
- ***Amicus Briefs.*** The division also submitted amicus briefs in various cases dealing with areas involving consumer protections.

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 parties.

## **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 telecommunication, natural gas, and electric industries, particularly with regard to utility rates, reliability of service, and service quality. Over the past few years, the issues presented by this area of the law have grown increasingly complicated, due to the complex interplay of federal and state jurisdiction with regard to utility regulation and to the development of new telecommunications technologies. Staff members working in this field have developed highly specialized knowledge and experience which they utilize to advocate for the interests of

consumers at the Minnesota Public Utilities Commission and other regulatory agencies, in the courts, and at the legislature.

- ***Complaint Mediation.*** The staff members of the RUD investigate and assist in mediations of individual and small business complaints relating to all aspects of telecommunications and energy service. In addition to handling complaints reported directly to the Attorney General's Office, utility complaints are also referred to the AGO by the Minnesota Public Utilities Commission, the Department of Commerce, and the Federal Communications Commission. Significant monetary savings and refunds, as well as countless non-monetary resolutions, resulted from mediation efforts undertaken on behalf Minnesota citizens and small businesses. Utilities mediators experienced a notable increase in the number of calls to the Office placed by distraught Minnesota citizens facing disconnections of gas or electricity services during FY 07; it appears likely that the trend will continue, due to record amounts of bad debt and more aggressive collections practices by utility companies. RUD attorneys provided assistance and worked closely with mediators to assist in getting services restored for customers with serious medical conditions who either were already disconnected or who faced a disconnection. The following are just a few examples of the assistance provided by the Office:

- A citizen contacted the AGO because an electric utility disconnected the electric service of a single parent of three children, one of whom required a feeding tube. As a result of the citizen's back surgery and other factors, she inadvertently fell behind on her bill. Despite her efforts to reason with company representatives, she was told that even if her son was on life support, she could still be disconnected. With the mediator's assistance, her service was restored.
- A utility had notified a customer of an imminent disconnection of electric service. Even after the company was informed by the mediator that the customer may need and use life-sustaining equipment that required electricity, a company representative stated, "Some customers think that they do not have to pay their bills when they're on life support." Through continued efforts, the mediator was able to delay the disconnection.
- A customer called after her electric service had been disconnected after her efforts to obtain financial assistance had been unsuccessful. She was on bed rest because of a difficult pregnancy, and faced eviction because her service had been off for three weeks. After requesting the assistance of the Attorney General's Office, the company agreed to accept a partial payment and enter into payment arrangements on the balance owed. Her service was then restored.
- A utility customer had been without electricity for two weeks, and also without water as a result of the disconnection because she required the use of an electric pump. She noted that she had to travel ten miles to obtain

water, and that she has a family, including a one and one-half year old child. Only after the assistance of the mediator was her service restored.

- ***Xcel Energy Fixed Bill and CenterPoint Energy No Surprise Bill Complaint.*** The Office received a large number of complaints from utility customers on fixed billing programs whereby they were to pay a fixed monthly amount for natural gas service, regardless of the actual price of the gas used. Both Xcel and CenterPoint promoted these programs to ratepayers as though there was an equal chance that customers might pay more or less for their gas on the programs than they would as standard bill payers. Yet the customers participating in the programs actually paid over \$20 million dollars more for natural gas than standard bill payers and almost all of these utility customers lost money. This Office filed a complaint with the Public Utilities Commission asking it to open an investigation into the programs, and either terminate or substantially modify them. The Commission granted this Office's request to open an investigation and requested that RUD conduct the investigation on behalf of the PUC. While the investigation is ongoing, on July 3, 2007, the Commission suspended both programs (after the end of the 2007 calendar year program) until the investigation is complete, finding that these programs are no longer in the public interest. The Commission also ordered that low-income customers participating in the federally-funded LIHEAP program be allowed to exit the current year's fixed billing programs without a fee, which will recapture scarce low-income funding that otherwise would go to pay far more than necessary for the energy actually used. The final resolution of these matters is pending.
- ***Xcel Energy Natural Gas Rate Case.*** The RUD opposed a portion of the rate increase requested by Xcel. The RUD prevailed on several key issues it raised in this case, including the company's rate of return, the monthly residential customer charge, and the recovery mechanism for the affordability program's costs. The Commission's acceptance of the RUD's recommended rate of return, rather than the amount sought by the company, will save ratepayers more than \$3 million per year. In addition, the RUD successfully argued for a recovery mechanism using a volumetric charge for the costs of a \$2.5 million affordability program Xcel proposed pursuant to the recently amended Minn. Stat. § 216B.16, subd. 15. The volumetric charge provides a more equitable sharing of these costs across much of Xcel's firm customer base. The Commission also rejected Xcel's effort to increase the monthly customer charge, as the RUD stressed that such an increase was unwarranted and actually would be contrary to state policies aimed at promoting conservation.
- ***In the Matter of the Review of the 2005 Annual Automatic Adjustment of Charges for All Electric and Gas Utilities.*** Minnesota gas utilities recover the actual costs of the natural gas it sells through a monthly charge to its customers. Minn. Stat. § 216B.16, subd. 7, allows these companies to reflect changes in the price of gas in a monthly Purchased Gas Adjustment ("PGA") for "direct costs for natural gas delivered." Each year, the companies are required to make a detailed accounting to the Commission, who reviews and approves the rates, without the need for the company to file a complete rate case.



In January, 2006, CenterPoint Energy notified the Commission that its system sales had been over-stated by \$9.2 million for 2004-2005 and an additional \$12.6 million for the years 2000-2001 through 2003-2004. CPE requested that it be allowed to recover these amounts going forward through the PGA

RUD opposed CPE's requests for the recovery of these amounts, arguing that CPE had failed to establish that it had actually failed to recover these amounts through two intervening rate cases. RUD also recommended that CPE obtain an independent audit before the Commission approved its then current and future reports. The Commission voted unanimously to deny CPE any recovery of the \$21 million and ordered an independent audit conducted of CPE's 2005 and 2006 PGA, to be paid for at shareholder expense. CPE has appealed the Commission's decision to the Court of Appeals. Meanwhile, the independent auditor has begun the audit of CPE's systems in an effort to find out why this occurred and to make sure it will not happen again.

- ***Joint Petition for Approval of Transfer of Transmission Assets of Interstate Power and Light Company and ITC Midwest LLC.*** Alliant Energy's public utility affiliate, Interstate Power and Light ("IPL") serves about 40,000 electric customers in Minnesota and intends to sell all its transmission infrastructure to a "transmission-only" company, ITC Midwest LLC ("ITC"). This sale involves the sale of \$400 million of assets for \$750 million and the driving factor for this proposed transaction is higher authorized returns from FERC, plus tax benefits for the gains from the sale of the assets. Rates necessarily will increase and there are no plans to upgrade or add to the transmission facilities.

While a recent legislative change now allows for the transfer of transmission assets to a transmission-only company under the jurisdiction of the Federal Energy Regulatory Commission, this transaction will necessarily involve the unbundling of transmission from the generation and distribution components of IPL's utility operations, which will result in the loss of state jurisdiction to set the transmission component of IPL's rates.

RUD objected to this transaction as it appears that there will be little if any benefit to ratepayers and any benefit would be outweighed by increased costs and loss of state jurisdiction. The Commission has ordered that this matter is to be decided on a fast-track and contested case hearings before an Administrative Law Judge begin the last week of September, with a final Commission decision anticipated by year's end.

- ***Review of Otter Tail Power.*** Otter Tail Power's monthly Fuel Clause Adjustment reports show enormous wholesale margins, yet Otter Tail Power has refused to share its profits on the wholesale market with its ratepayers. Otter Tail's actions are resulting in excessive rates to retail customers and excessive windfalls to its shareholders, while ratepayers will be expected to pay for repair and replacement of these facilities. At the urging of RUD, the Commission has ordered Otter Tail to file a general rate case by October 1, 2007.

- ***Alternative Form of Regulation Plans.*** Minnesota law allows telephone companies to provide service in Minnesota without being subject to traditional “rate of return” regulation. RUD joined the DOC in a review of the Frontier’s recent proposed AFOR Plan and engaged in negotiations with the view of reaching a settlement that allowed the company more regulatory flexibility while protecting residential ratepayers from unfair rate increases and insuring quality standards.
- ***Buzz Telecom/UMC.*** Buzz Telecom/UMCC was brought before the Commission by RUD and the DOC for slamming (unauthorized switching of telephone service) seniors and nursing home/assisted living residents. The Commission revoked the operating certificate and authorized the Attorney General to seek civil penalties in District Court.
- ***Cell Phone Complaints.*** The AGO has received hundreds of complaints against cell phone companies regarding contract extension fees, customer service, cell phone coverage areas and other charges deemed inappropriate. The Office has been successful in mediating numerous complaints, however, the problem continues to increase.

# CIVIL REGULATION SECTION

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## ENVIRONMENTAL PROTECTION DIVISION

Attorneys in the Environmental Protection Division ("EPD") provide legal advice and representation to the Minnesota Pollution Control Agency ("MPCA") and the Environmental Quality Board ("EQB").

### Environmental Law Enforcement

EPD attorneys work with MPCA staff and provide legal advice regarding available enforcement alternatives. Once MPCA decides on a course of action, EPD attorneys represent MPCA in carrying out the 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 actions or coming into compliance, the payment of a civil penalty, and sometimes the implementation of supplemental environmental improvement projects. Some enforcement actions also include a cost recovery component to recover monetary expenditures made by the State to mitigate or remediate environmental damage. 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 07, MPCA enforcement actions resulted in approximately 120 APOs and 40 stipulation agreements. The civil penalties imposed totaled \$1.7 million. Enforcement matters handled by EPD attorneys during FY 07 included the following:

- Represented MPCA in negotiating a stipulation agreement with Southern Minnesota Beet Sugar Cooperative Processing Plant for discharging treated waste water into a ditch not allowed under its permit, and for allowing untreated waste water to escape to adjacent property. Under the stipulation, the company agreed to make improvements and to pay a \$280,700 civil penalty.
- Represented MPCA in negotiating a stipulation agreement with Wal-Mart Stores, Inc. for violating its storm water permit by allowing run-off water from the store parking lot and roof top to reach Miller Creek, a state designated trout stream, before it was adequately filtered, treated, and cooled. The company agreed to pay a \$40,000 civil penalty to the

MPCA and also pay \$20,000 for storm water improvements in the Miller Creek water shed.

- Represented MPCA in negotiating a stipulation with the Duluth Missabe and Iron Range Railroad Company for violating its air permit. The company agreed to make equipment and operational improvements to provide better dust control and also agreed to pay a civil penalty of \$58,000.

### **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 maintained in the EPD regarding ongoing legal advice. The majority of issues on which MPCA seeks legal services involve permitting, rulemaking, and environmental review. For example, in FY 07 the EPD represented the MPCA on numerous environmental review and permitting appeals in state district courts, the Office of Administrative Hearings, the Minnesota Court of Appeals, the Minnesota Supreme Court, and in federal district court. The most noteworthy of these matters, some of which are ongoing, include a challenge to the issuance of the Annandale/Maple Lake wastewater treatment facility permit which was affirmed by the Minnesota Supreme Court.

The EPD also represented the MPCA in negotiating a consent order with 3M on perfluorochemical ("PFC") contamination. The consent order contains language that will result in excavation of contaminated material at three 3M sites in Cottage Grove, Woodbury, and Oakdale. Additionally, 3M agreed to pay up to \$5 million over the next four years to the agency for research costs on the presence and effects of PFCs found in the environment, but not directly connected to 3M sites. This is in addition to 3M paying for all costs associated with research on PFCs in the environment related to the 3M sites. Additionally, 3M agreed, in the consent order, to contribute up to \$8 million to remediate the Washington County landfill site, which is managed under the State's Closed Landfill Program.

The EPD also assisted in recovering over \$1.5 million from insurers to recover landfill cleanup costs under the Landfill Cleanup Act. This was the fifth lawsuit filed by the State to recover landfill cleanup costs from insurers.

The EPD also provided legal services to the MPCA on a variety of real estate and contract matters in FY 07, 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 resource review.

The EPD also provides legal service to the MPCA division of Office of Environmental Assistance ("OEA") which 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 governments 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 07 the EPD provided a variety of general legal services to OEA, including loan document preparation, contract review and grant terms review. EPD negotiated a contract with Connexus Energy, whereby Connexus purchased electricity which was produced by excess methane from the WDE closed landfill.

### **Legal Services to Environmental Quality Board**

EPD provides legal advice to the Environmental Quality Board ("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 07 EQB continued to oversee the environmental review process as carried out by local and state governmental units under the Minnesota Environmental Policy Act. The EPD represented the EQB's interests in Phase I Environmental Review Rules Revision. Phase II Environmental Review Rules Revisions are on-going.

### **HEALTH INVESTIGATIONS DIVISION**

The Health Investigations Division performs investigative services on behalf of 17 health licensing boards and two non-health licensing boards. The division works in conjunction with the Health Licensing Division.

Diverse investigative skills and technical knowledge are required to conduct thorough fact finding investigations to ensure maximum public protection. Division staff includes investigators with professional expertise in nursing, psychology, dentistry, and other disciplines. The staff investigates allegations of sexual misconduct, reviews allegations relating to competency and quality of care, review billing records relating to allegations of billing fraud and inspects practice settings for infection control procedures. Allegations which, if proven, present immediate danger to the public or the subject of the investigation are handled on an expedited basis. During FY 06/07 division investigators completed over three hundred investigations.

The division manager reviews complaints referred for investigation to determine whether jurisdictional and/or multiple issues exist. Allegations in the complaints are complex and often involve multiple issues which are interconnected. An investigator is then assigned to the case. This common point-of-entry procedure ensures a coordinated and focused approach from the beginning of the investigation through its completion.

Division staff uses investigative reporting procedures and case management software to manage their cases and, to some degree, conduct the investigation. These tools help investigators in achieving division objectives of conducting thorough investigations in a timely, efficient and objective manner. Upon completion of the investigation, the investigator prepares a report that is forwarded to the appropriate licensing board. Before a Board receives a report, an attorney in the Health Licensing Division reviews the report.

## 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 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 07 the division provided legal representation to all 16 of the State's health-related licensing boards, which include the 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 primarily consist of board activities designed to 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, including regularly advising the boards on procedural due process concerns, statutory interpretation of disciplinary provisions, subpoena power, and overall board authority. Division attorneys also provide legal representation to the boards during disciplinary hearings and conferences. The boards extensively used pre-litigation mediation and negotiation to settle contested cases during FY 07. The division negotiated several disciplinary agreements which required physicians, pharmacists, nurses, and dentists to attend training sessions designed to improve substandard skills.

During FY 07 the division handled numerous administrative contested case proceedings involving professional misconduct, sexual misconduct, mental health/chemical dependency issues, and health provider fraud. For example, the division assisted the Board of Nursing on 280 disciplinary complaints and successfully handled contested cases resulting in the temporary suspension of a veterinarian's license for failing to provide pain medications for surgical procedures and the revocation of another veterinarian's license for failing, after repeated attempts at redress, to meet the minimum standards of veterinary care. The division assisted the boards in entering into settlement agreements following mediation or direct negotiation, including a recommendation of discipline for a nurse who falsely represented that she was providing vaccinations and was charging for those vaccinations, a recommendation of discipline for a physician who had a sexual relationship with a mentally ill former patient, and a recommendation of surrender of license for a physician who had prescribed pain medications to patients with a known addiction and no physical reason for the pain medications and who had failed to demonstrate competency in basic medical care. The division has also been representing the Board of Veterinary Medicine against a complex constitutional challenge to one of the Board's statutes.

The division also drafts extensive documents and due process pleadings and provides legal advice on license application issues, data practices and open meeting law questions.

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

## **LABOR/CORRECTIONS/HUMAN RIGHTS DIVISION**

The Labor/Corrections/Human Rights/Collections Division represents the departments of Human Rights, Labor and Industry, Economic Security, and Veterans Affairs as well as the Bureau of Mediation Services, Public Employees Retirement Association ("PERA"), Minnesota State Retirement System, Teachers Retirement Association, Department of Corrections, Veterans 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 negotiation and litigation regarding these matters and seeks to obtain appropriate monetary and non-monetary relief. The division resolved 40 such cases in FY 07. The division's enforcement efforts resulted in Minnesota and its citizens receiving compensatory and injunctive relief for illegal discriminatory treatment. In FY 07, the division assisted the Department in obtaining compensatory relief for Minnesota citizens in the amount of approximately \$647,400.

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 more than \$3,500,000 in pension funds.
- Participation in bankruptcy proceedings in order to protect the State's interest in collecting reemployment benefits overpayments. In the past fiscal year, the Attorney General's Office intervention prevented the discharge in bankruptcy of approximately \$30,500 of improperly received benefits.

The division provided advice and representation to the Minnesota Department of Labor and Industry ("DOLI"), which assumed responsibility for regulating the residential building contractor industry, including the Building Contractor's Recovery Fund in 2005. The division prosecuted numerous disciplinary actions of residential building contractors, remodelers, roofers, and manufactured home installers. Common violations include unlicensed building contractor activity, failure to satisfy judgments, failure to complete jobs, and code violations. During FY 07, the division opened 131 building contractor files for DOLI and handled 89 district court claims against the Building Contractor's Recovery Fund.

In representing DOLI, the division also engages in litigation to enforce occupational safety and health standards, including cases regarding workplace fatalities. In FY 07, the office assisted in 28 OSHA cases and obtaining about \$80,878 in OSHA fines.

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. The division successfully defended a high volume of lawsuits brought by inmates against the Department. Last year, the division handled over 75 cases brought by inmates. In one case, a civilly-committed sex offender, sued the medical director of a correctional facility in federal court, alleging that he had received inadequate medical treatment while he was incarcerated. The inmate was represented by a national law firm. The federal judge denied the State's motion for summary judgment and held that the case presented jury issues. The division saved the State over \$100,000 when the division tried the case to a jury and obtained a full defense verdict.

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.
- Represented the State's interests in probate court in escheat cases.

Examples of the division's work in bankruptcy matters include representation of the State's interests in the Northwest Airlines' bankruptcy case and providing advice to various State agencies with regard to potential claims against Northwest Airlines and related entities.

## **TAX LITIGATION & EDUCATION DIVISION**

The Tax Litigation Division represents the Minnesota Department of Revenue ("Department") in taxpayer-initiated court cases appealing the Department's 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 07, the division opened 89 new cases including numerous bankruptcy matters. The majority of new cases involved the State's income and sales taxes. Some cases involve very substantial corporate refund claims and challenge Department assessments ranging in amounts of \$10 million to \$2.5 million. The division also continues to handle a large volume of *pro se* matters. These include tax protestor cases, in which persons assert 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 07.

**Significant Resolved Litigation:**

- Obtained a favorable decision in the U.S. Federal District Court (Minnesota) in which two prominent interstate railroad companies challenged Minnesota sales and use tax imposed on diesel fuel purchases used by railroads in Minnesota holding that the tax is not discriminatory against rail carriers in violation of federal law.
- Obtained a favorable decision at the Minnesota Supreme Court (“Court”) sustaining the purpose of the use tax and upholding the Department’s tax assessment in excess of \$98,000. The Court upheld the Tax Court’s affirmance of the Department’s determination that use tax should be imposed on the use of otherwise taxable items that are brought into Minnesota untaxed and applied a plain language analysis to the exemption statute noting that taxable "grain bins" could not become exempt based on the final use to which those bins were put.
- Obtained a favorable decision at the Minnesota Supreme Court denying a taxpayer’s petition for rehearing after the Minnesota Supreme Court affirmed a Tax Court ruling that the taxpayer was subject to tax liability on his individual income and upholding the Tax Court’s denial of the taxpayer’s motion to remove the presiding judge for alleged bias.
- Successfully obtained the dismissal of a suit in Ramsey District Court which named three Department Collections Officers (who properly filed notices and levies issued for delinquent taxes) and which sought injunctive relief, costs and attorneys fees and damages in excess of \$6 million dollars.
- Obtained a favorable decision at the Minnesota Tax Court affirming the Department’s determination that a tax-payer was a resident of Minnesota and therefore his wages earned on the Indian reservation located in Wisconsin were properly includible in Minnesota and holding that a resident of Minnesota could be taxed on his rural-wide revenues.
- Obtained a favorable settlement in a 13 county gas pipeline property valuation case involving challenges to the validity of the rule under which utilities are valued (Minn. R. 8100.0100) for the tax assessment years 2004, 2005, and 2006.
- Obtained a favorable settlement agreement on the issue of whether the Rental Auto Facility charge (“RAFC”) imposed by the Metropolitan Airports Commission on rental car facilities at the Minneapolis - St. Paul International Airport, was properly includable in the computational base of sales taxes collected from renters of vehicles to be remitted to the Department of Revenue. The case was settled for a payment of \$125,000 in tax and agreement to begin collecting and remitting the tax on the RAFC no later than August 1, 2006. The settlement also included a tax payment of \$30,000 made by a very

large rental car company's subsidiary, with the same agreement to begin collecting and remitting the tax.

- Successfully settled a case on the issue of whether numerous "herbal medicines" and other "homeopathic products" sold by a business taxpayer were subject to the Minnesota sales tax. The taxpayer took the position that the products sold by him should be exempt from the sales tax in the same manner as are prescription medicines, but after a series of conferences and formal discovery requests, the case was settled for a tax payment of about \$94,000 covering the audit period and the subsequent eighteen months, as well as an agreement to collect and remit the tax in the future on all sales of the products at issue.
- Obtained a favorable decision at the Tax Court granting the Commissioner's Motion to Dismiss a taxpayer's appeal for failure to prosecute. This case involved assessment against the taxpayer of about \$107,000 in individual income tax, penalties, and interest for the tax year 1999.
- Obtained the voluntary dismissal of one of three lawsuits brought by large interstate natural gas pipelines who are seeking a refund of over \$8.5 Million dollars from the Department for the use tax the pipelines had paid for the fuel they used in their pipeline operations through Minnesota. These suits allege numerous constitutional challenges to the use tax as it applies to their operations.

#### **Significant Pending Litigation:**

The division's tax litigation is complex. Many cases involve million dollar figures. Complex litigation involves defending the constitutional validity of Minnesota's use tax on fuel used in multiple interstate natural gas pipelines and the appropriate assessment of corporate franchise taxes, the validity of the JOBZ and Bioscience Industry Zone Programs (which create tax free zones throughout the State spurring targeted job growth and economic development). Several cases also involve the indirect sales tax audits issued to cash businesses, where a lack of business records requires the reconstruction of taxpayer's sales through third party records.

- **Bankruptcy Matters:** The Division appears in proceedings and bankruptcy court involving individual or corporate debtors who have either failed to file the necessary income returns or are challenging the State's claims in bankruptcy.
- **Tax Protestors:** The Division obtained several favorable decisions in state supreme court, federal district court, state district court and state 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.
- **Miscellaneous Liens for the Department:** The Division also reviews and responds to numerous miscellaneous liens, lawsuits and filings involving the Department including, foreclosure actions, quiet title actions, land registration, notices of property sales, etc. in state and federal court and successfully defended or preserved the priority of state tax liens over the liens and judgments of other claimants.

## EDUCATION

The Education Division represents the State's complex and varied educational system, including the Minnesota Department of Education ("MDE"), the Office of Higher Education ("OHE"), and the Perpich Center for Arts Education ("PCAE").

### **Minnesota Department of Education**

MDE administers and oversees the State's K-12 education programs. The Division provides legal advice for MDE's many programs, including charter school issues, state merit pay legislation (Q Comp), data practices, the federal No Child Left Behind Act, graduation standards and testing, the child and adult food care program, and state financial audit issues.

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

The Office of Higher Education 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 Perpich Center for Arts Education (PCAE)**

The Perpich Center for Arts Education, also called the Arts High School, is a residential public high school operated by the state.

### **Minnesota Department of Education**

Special note is made of the following activities in the education area.

- **Charter Schools.** Provided legal advice to MDE on numerous issues relating to charter schools, including accountability, state aid overpayments, lease aid, grants management, sponsorship contract appeals, and financial audits. Successfully defended MDE in two lawsuits in state district court and Court of Appeals arising out of closure of two charter schools. The division defends the Department decision making on school based maltreatment of various cases.
- **Special Education.** Successfully defended MDE in numerous lawsuits in Minnesota federal district court and in the Eighth Circuit regarding special education. These lawsuits challenged MDE's supervision of local school districts in complying with federal and state special education laws. Also, successfully defended MDE in the Court of Appeals in two separate lawsuits brought by local school districts challenging MDE's complaint resolution decisions regarding special education services. In addition, provided legal advice in the interpretation of federal and state special education laws, and advises on private trade school and school related data practices issues.

- ***Maltreatment of Minors in Schools.*** Represented MDE in maltreatment hearings. Reports of maltreatment of minors that occur in school buildings are investigated by MDE. After MDE makes a finding of maltreatment by a school worker (such as a teacher, assistant teacher or bus driver), the school worker may request an administrative hearing. Successfully defended the first appeal of MDE's final determination of maltreatment to state district court.
- ***Alternative Teacher Compensation.*** Represented MDE in Court of Appeals in school district challenge to requirements of alternative teacher compensation (or "Q Comp") statute.
- ***Child and Adult Food Care Program Overpayments.*** Defended MDE's determination to recover fraudulent overpayment for meals served in day care homes.

# HEALTH AND HUMAN SERVICES 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.

### Registration and Consumer Assistance

Charitable organizations and professional fund-raisers must register and file regular reports with the Attorney General's Office. In the last fiscal year, about \$443,000 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 7,400 charitable (soliciting) organizations, nearly 2,700 charitable trusts, and about 340 professional fund-raisers. The information from these files is made available to the public in its entirety in a public file room in the Charities Division and in summary form on the Charities Division section of the Attorney General's website. The division 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 publicly available increases the accountability of charities and nonprofits 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 division has extensive knowledge of nonprofit and charity law and provides significant assistance to citizens who call or write about a wide variety of nonprofit or charities issues, including such topics as: charitable solicitation and "do not call" regulations; charitable organization and trust registration; forming and dissolving nonprofit corporations; nonprofit governance; the rights and responsibilities of directors and members; disputes with nonprofit hospitals or other nonprofit organizations; and misuse of charitable assets.

### Oversight

The Charities Division oversees laws relating to nonprofits and charitable organizations. By statute, the Office receives notice of certain charitable trust and probate matters filed in the district courts and reviewed over 270 such notices in the last fiscal year. The division may become involved in those matters to protect charitable assets and represent the interests of charitable beneficiaries that might otherwise be unable to represent themselves. The division also receives notice of the dissolution, merger, consolidation or transfer of all or substantially all assets of charitable nonprofit corporations and received about 145 such notices in the last fiscal year. These notices are reviewed to ensure that such assets are protected during such process and used for the purposes for which they were solicited and held.

## Enforcement

Through the enforcement of laws governing nonprofit and charitable organizations, the Charities Division is able to help combat fraudulent 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:

- **Minnesota Hospitals Settlement Agreement.** In 2007, Minnesota hospitals renewed agreements with the Attorney General's Office to reform and improve billing and debt collection practices. Under these agreements, originally signed in 2005, 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 which provided that hospital with the most revenue for its services in the previous calendar year. These agreements also provide substantial protections for patients as it relates to the debt collection practices of the hospitals and their collection agencies. The 2007 agreements with each Minnesota hospital are for a five-year term.
- **WesMin Resource Conservation and Development Council.** In May 2007, this Office entered into an Assurance of Discontinuance with WesMin Resource Conservation & Development Council, a charitable nonprofit corporation funded and supported in part by the USDA that serves a 14-county area in West Central Minnesota. WesMin partnered with an organic farmer to raise funds for and run a program he had started called Food For Folk, designed to provide fresh organic produce to local food shelves. WesMin's Executive Director induced the farmer and another party to provide tens of thousands of dollars of goods and services for the Food For Folk program by claiming that she had obtained a number of large grants for the program to reimburse them for their expenses. This Office's investigation revealed that the Executive Director had lied about the existence of the grant funding and fabricated the funders, as well as created and produced false documents in an attempt to cover up her actions. WesMin agreed to Confessions of Judgment for the two victims totaling over \$58,000. Douglas County is pursuing criminal charges against the former Executive Director.
- **Worldwide Readers Service, Inc.** Worldwide Readers Service is a for-profit magazine subscription agency based in Florida that uses "independent sales agents" around the country. It was selling magazines door-to-door in Minnesota and falsely claiming that the proceeds would benefit specified Minnesota charities, which they were not. Further, the Charities Division investigation revealed that the organization did not have permission from any of the charities to solicit on their behalf. In December of 2006, Worldwide Reader Services entered into an Assurance of Discontinuance with this Office under which it paid civil penalties and is prohibited from soliciting or selling magazines in Minnesota for three years.

- **Reaching Arms International, Incorporated.** In February of 2007, this Office obtained an order requiring an audit of Reaching Arms International, Incorporated, an international adoption agency, because Reaching Arms was allegedly violating Minnesota law by requiring potential adoptive families to pay for adoption services before they were performed, to pay for fees not disclosed by Reaching Arms on its fee schedule and then threatening to withhold adoptions if the clients did not pay these additional fees, and increasing fees for services during the adoption process. This Office later entered into a Stipulation for the appointment of a receiver and dissolution of the adoption agency, so that its assets can be appropriately distributed. The Stipulation also provides for the Minnesota Department of Human Services to conduct an audit of the organization, which is ongoing.
- **General Benevolence Association of Churches of Christ and Christian Churches of Minnesota.** The Association was organized as a nonprofit corporation in 1957. Over the years, it appeared that its assets came under the control of a single individual and the organization engaged in related-party transactions that resulted in questionable expenditures of its funds. During the course of this Office's investigation of the Association, the Association filed a Petition for Supervised Dissolution in Lyon County. This Office filed a Petition for Dissolution of the Association in Hennepin County, the location of its registered office. This Office alleged that the Association was operating without a duly elected board, was failing to follow its governing documents, did not have annual member's meetings, was failing to properly maintain board minutes, and did not have proper internal controls and governance policies to protect charitable assets. After these petitions were filed, the parties entered into a stipulation for the members to vote on whether to continue as a nonprofit corporation. After a majority of the members voted to continue, the parties stipulated to a process for a nominating committee to be selected and board elections held. Once the Association has a valid board in place, this Office will address what additional actions, if any, will be taken against the Association.

## **Education**

Another function of the Charities Division is to educate the public and officers and directors of nonprofit organizations about nonprofit and charity law in Minnesota. Important topics include fiduciary duties for board members, governance issues, and solicitation and registration requirements. Typical audiences consist of nonprofit board members, community members; leaders and volunteers; certified public accountants; and attorneys who represent nonprofits. In the past year, members of the Charities Division spoke at various Continuing Legal Education and training events and sponsored a governance training session in Mankato, which was attended by over 100 board members from the surrounding areas. In addition, the division met with "troubled" boards to provide information to them and explain the requirements of Minnesota law.

## HEALTH/ANTITRUST DIVISION

### Health Department Matters

The division provides legal advice to the Minnesota Department of Health (the Department) concerning its regulatory responsibilities and represents the Department in all litigation and administrative enforcement actions. The Department 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 the Department about legal issues concerning contracts, leases, and other transactions.

Specific examples of the division's work in FY 07 include the following:

- ***Protecting the Public from Asbestos Contamination.*** The Department revoked an individual's certification to work in the asbestos abatement field, as well as his company's license, based on a pattern of violations of state regulations governing asbestos abatement. The Department later learned that the individual continued to work without certification. The Department sued to stop the individual from engaging in asbestos abatement without the proper certification. The party failed to respond to the lawsuit, and the Department moved for default judgment.
- ***Mobile Home Park Licensing Violations.*** The Department learned that a manufactured home park was operating without a license and was in violation of numerous statutes and regulations governing such parks, including operating with a failing sewage system. After the park failed to meet numerous deadlines to submit a voluntary closing plan, the Department filed suit. The parties entered into a stipulated agreement to close the park, according to a statutory closing process that gives protections to impacted residents.
- ***HIV Health Threats.*** Division attorneys advised the Department in several matters involving people with HIV who are engaging in at-risk behaviors. One individual was issued a health directive in 1995 but since that time has become infected with two sexually transmitted diseases, indicating that he is continuing to engage in at-risk behaviors. Division attorneys worked with the Department to resolve the matter prior to going to court to enforce the health directive. In another case, a division attorney represented the Department in a court proceeding involving an individual with HIV who is the subject of a health directive as well as a mental health commitment order. The court issued an order requiring her to comply with the health directive.

A significant amount of the division's work in FY 07 involved defending the Department's determinations that individuals or health care facilities violated the Vulnerable Adults Act by neglecting, abusing or financially exploiting vulnerable adults. In addition, the division defended the Department 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 vulnerable adult was found out of bed with unexplained injuries at 5:30 a.m. and was not taken to the hospital until 4:00 p.m., where he died several weeks later. No one had checked on him during the night shift and he apparently fell out of bed at least once. He had also fallen several weeks earlier. His death certificate listed the cause of death as trauma from falls. The Department investigated and found that the facility was responsible for neglect. After a lengthy hearing the Commissioner upheld the finding of neglect against the facility.
- ***Nursing Home Neglect.*** A nursing assistant neglected four vulnerable adults over the course of a night shift. The nursing assistant left one vulnerable adult in the bathroom for a half hour without checking on her; failed to check on a second resident during the night; repositioned a third resident's leg incorrectly, twisting it; and transferred a fourth resident without using a transfer belt, then left her unattended in a wheelchair without a sensor alarm. After a hearing, the Commissioner affirmed the neglect findings as well as the disqualification resulting from recurring maltreatment (which disqualifies the nursing assistant from working in certain health care and other facilities). The matter was appealed to the district court and then the Court of Appeals. The Court of Appeals ultimately affirmed the Commissioner's order.
- ***Nursing Home Neglect.*** A nursing assistant transferred a vulnerable adult alone, although he was aware that the resident's health care plan called for a two-person transfer. The vulnerable adult was at risk for falls and had severe osteoarthritis in her knees and hips. During the transfer, the resident twisted her feet, causing a fracture that required medical treatment. The Department concluded the nursing assistant neglected the resident. The nursing assistant appealed and the Commissioner ultimately upheld the neglect finding.
- ***Nursing Home Abuse.*** Following an investigation, the Department determined that a nursing home assistant sexually abused a vulnerable adult while assisting her with showering. Because of the sexual abuse finding, he is disqualified for seven years from working in certain health care and other employment positions. Following a hearing, the Human Services Judge recommended upholding the abuse finding and the disqualification. The Commissioner affirmed.
- ***Nursing Home Abuse.*** A Department investigation found that a nursing assistant hit a resident on the vulnerable adult's head and chest. Following an evidentiary hearing, a Human Services Judge recommended that the abuse finding be upheld, and the Commissioner affirmed.
- ***Nursing Home Abuse.*** A nursing assistant at a nursing home abused a vulnerable adult by grabbing her right arm, bending it backward until it popped, causing a fracture of a bone in the forearm. After a hearing, the Human Services Judge recommended upholding the abuse finding, and the Commissioner ultimately affirmed.
- ***Disqualification Appeal.*** A county social services agency found that a housekeeper in a nursing home neglected her children and a grandchild by allowing them to be sexually

abused. The housekeeper was disqualified from having direct contact with nursing home residents. The housekeeper appealed, arguing that the disqualification should be set aside to allow her to keep her job. The Commissioner ultimately affirmed the Department's refusal to set aside the disqualification.

### **Health Advocacy for Citizens**

The division also assists citizens with a variety of health related questions and concerns, including questions about health plans and health coverage. Examples include:

- A woman with health care coverage through her husband's employer and the federal government needed assistance in resolving significant health care bills after giving birth to a premature baby. She gave birth at the same time the family was moving from Wisconsin to Minnesota. The complaint involved multiple providers in two states, two insurance companies, and a Medical Assistance issue. We were able to assist the citizen in getting \$4,000 of health care claims covered.
- A citizen who obtained out-of-state health care after a motorcycle accident, requested assistance after the provider refused to submit the claim to the MinnesotaCare program and instead referred the patient to collections. After the division intervened, the provider ultimately agreed to waive the claim, saving the consumer over \$900.
- A citizen complained that his HMO did not include his community fitness center in its "frequent fitness" program under which it gave HMO members a \$20 monthly credit for exercising regularly. After the division contacted the HMO, it added the community fitness center to its approved network.
- Another citizen complained that her health care clinic billed her for two separate office visits because she discussed two separate health issues during her appointment. Although the clinic refused to change its billing practice, it did issue a refund to the citizen after the division wrote to question the billing.

The division also investigated two health care companies after learning of activities which could adversely affect Minnesota health care consumers.

- In the first investigation, the division issued a civil investigative demand to a health care clinic after receiving numerous complaints from patients and a former employee, alleging abusive and potentially illegal billing and debt collection practices. The complaints indicated that the clinic was trying to collect from patients who had insurance, in some cases after the insurers had denied the claims as untimely. Some patients also complained that the clinic referred them to collections agencies without billing the patients first, and that the collections agencies used abusive debt collection practices. The division filed a motion to compel a full response to the investigative demand, and the investigation is ongoing.

- In another investigation, the division issued an investigative demand to a large health plan company concerning stock option backdating, and defended against the company's motion to quash the demand at both the district court and court of appeals. The case is still pending.

### **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 the government have a competitive environment in which to purchase goods and services.

Specific examples of the division's work in FY 07 include:

- ***Investigating Consolidation in Wireless Markets in Rural Minnesota.*** Two cell phone companies, ALLTEL and Midwest Wireless, merged. Because the merger would give the new company a huge market share in southern Minnesota, the State coordinated with the U.S. Department of Justice in filing a complaint and consent decree in federal district court in Minnesota. The consent decree required ALLTEL to divest most of its southern Minnesota assets to avoid having a market share of 65-90 percent in the affected geographic area. Rural Cellular Corporation (doing business as Unicel) closed on the purchase of ALLTEL's southern Minnesota assets in spring 2007.
- ***Multistate Pharmaceutical Settlement.*** Minnesota, along with 33 other states and the District of Columbia obtained a settlement with drug company Warner Chilcott for \$5.5 million and injunctive relief in an antitrust lawsuit filed in U.S. District Court for the District of Columbia regarding the oral contraceptive Ovcon. Minnesota's portion of the settlement was approximately \$111,000. The lawsuit alleged that drug companies Warner Chilcott and Barr Pharmaceuticals entered into an unlawful agreement not to compete, whereby Warner Chilcott paid Barr \$20 million not to market a lower-cost generic version of Ovcon. The litigation continues against Barr.
- ***Investigating Gas Prices.*** The State received numerous complaints and inquiries about rising gas prices. In response, the Office of the Attorney General wrote to the Federal Trade Commission, urging it to take a harder retrospective look at the effects of past mergers in the petroleum industry on gas prices throughout the country. The Office also received information indicating that two competing Minnesota refineries would be operating at reduced capacity during the same time period for maintenance. The Office reviewed the circumstances surrounding the simultaneous maintenance, which could affect the supply and price of petroleum products in the State.
- ***Investigating Consolidation in Agricultural Markets.*** The State participated in a multistate investigation of the proposed merger of Monsanto and Delta and Pine Land and the merger's likely effect on competition in the market for treated seeds (such as

those that are herbicide or insecticide resistant). Monsanto is the primary developer of genetic seed traits, and Delta and Pine Land is a germplasm research company that licenses genetic traits and inserts them into seeds, primarily cotton. The State participated in the investigation to understand whether the merger, which primarily involved the traited cotton seed market, could have any effect on the soybean and corn markets in Minnesota. The U.S. Department of Justice ultimately approved the merger, subject to certain divestitures.

## **HUMAN SERVICES DIVISION**

The Human Services Division represents the Minnesota Department of Human Services ("DHS"), the state's largest agency with an annual budget of \$9 billion and approximately 7,200 employees. Division attorneys represent DHS in the four broad areas of Health Care, Children and Family Services, Licensing, and Mental Health.

### **Health Care**

Division attorneys in the health care area handle matters concerning Minnesota Health Care Programs ("MHCP"), continuing and long term care, health care compliance, and benefit recovery. MHCP includes medical assistance ("MA"), MinnesotaCare, and General Assistance Medical Care ("GAMC"). In continuing care, division attorneys represent the department on matters concerning nursing home rates, aging and adult services, disability services, deaf and hard of hearing services, and HIV/Aids programs. In the compliance and recovery area, division attorneys handle health care compliance matters, and recover payments for health care services from providers, responsible third-parties, and estates.

### **Children and Family Services**

Division attorneys representing the Children & Family Services division handle public assistance programs, child support, and children's protection matters. Public assistance programs include the Minnesota Family Investment Program ("MFIP"), General Assistance program ("GA"), Minnesota Supplemental Assistance program ("MSA"), and the Food Stamp program. In the child support area, division attorneys defend challenges to child support statutes and programs, and advise the agency in its oversight role over counties in administering child support collection. In children's protection, attorneys represent DHS in matters concerning children's welfare, adoption, foster care, guardianship, tribal issues, and other matters.

### **Mental Health**

Division attorneys in the mental health area represent DHS's adult and children's mental health programs, chemical dependency programs, and state operated treatment facilities and forensic services, which include regional treatment centers, state operated community facilities ("MSOCS"), children's and adolescent behavioral health centers, the Minnesota Security Hospital ("MSH"), and the Minnesota Sex Offender Program ("MSOP"). Division attorneys also handle a volume of cases in district court concerning neuroleptic medications for patients at

DHS facilities. In FY 07, division attorneys represented DHS in 17 civil lawsuits and over 38 petitions for discharge or transfer from patients at MSH and MSOP.

## Licensing

Division attorneys represent the DHS Licensing division in maltreatment cases (abuse, neglect, and financial exploitation) involving personal care provider organizations and programs licensed to provide adult daycare, adult foster care, and services for mental health, developmental disabilities, and chemical health. 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. In FY 07, division attorneys represented DHS in over 83 licensing proceedings.

Following are some examples of specific matters handled by the division:

- ***DHS v. Sabrina Walker:*** represented DHS in proceedings in state court to obtain a temporary restraining order and other relief in an effort to recover proceeds from a \$2.6 million check erroneously issued to an individual through the Minnesota accounting and procurement system.
- ***Reaching Arms International:*** represented DHS Licensing in an administrative proceeding to revoke the license of a Minnesota adoption agency, based on numerous violations of state law. The state's action resulted in the license holder agreeing to revocation of its adoption agency license.
- ***Foundation for Rural Healthcare:*** represented DHS in state and federal district courts, administrative hearings, and before the court of appeals regarding disallowance of costs related to the purchase of nursing homes between related parties. The court of appeals affirmed the commissioner's disallowance of costs and the Minnesota Supreme Court denied review.
- ***United Family Practice Health Center v. DHS, Goodno:*** defended DHS in federal court litigation challenging the agency's implementation of rate setting for new federally qualified health centers under a prospective payment system. The parties resolved the matter by settlement.
- ***Shaina Shagalow v. Goodno:*** represented DHS in district and appellate courts concerning an individual's demand for federal medical assistance (MA) waiver funding for services outside of the country. The court of appeals affirmed the commissioner's denial, and the Minnesota Supreme Court denied review.
- ***Fortner et al. v. State:*** defended DHS and agency officials in a state court lawsuit seeking a temporary restraining order and other relief to enjoin DHS from denying reimbursement claims by an autism services provider. The state's litigation response resulted in plaintiffs dismissing their lawsuit.

- **Reimbursement and third-party liability collections:** assisted DHS in recovering millions of dollars in MA and alternative care services through liens, tort claims and lawsuits against third-parties, and from special needs trusts.
- **Tribal/State Agreement:** assisted DHS in negotiating a Tribal/State Agreement on Indian Child Welfare with eleven Minnesota Indian tribes.
- **Medical Assistance Plan Disapproval and Disallowance litigation:** represented DHS in several cases against the federal Centers for Medicare and Medicaid Services ("CMS") regarding CMS disapproval of state MA plan provisions, and disallowance of federal funding arising from plan disapprovals. Several administrative matters are pending, and in one case, the Eighth Circuit Court of Appeals has affirmed CMS's disapproval of a plan provision providing for increased payments to county-owned nursing homes. Collectively, these cases potentially impact the state's budget in the tens of millions of dollars.

## **MEDICAID FRAUD DIVISION**

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

1. Review and investigate reports of vulnerable adult abuse, neglect and financial exploitation in hospitals, nursing homes, group homes, foster care homes, board and care residences, and by home care providers.
2. Investigate and prosecute health care providers who engaged in fraud against the Medical Assistance program.

During FY 07, the division's efforts resulted in the conviction of 18 individuals for Medicaid fraud, four individuals for abuse or neglect of vulnerable adults, and one individual for theft of patient funds. In addition, the division referred individuals for administrative sanctions and program exclusion. These referrals resulted in nine program suspensions (inability to participate as a provider in the Medicaid and Medicare programs) and two licensing suspensions. The division made court appearances in 11 counties during FY 07.

One goal of the division is to recover Medicaid funds from providers who fraudulently bill the program. During FY 07, the division obtained convictions of the co-owners of a personal care provider organization who billed the Medicaid program for services not provided. The co-owners were ordered to pay \$153,816.14 in Medicaid restitution and to each serve one year in the county jail. The owner of a medical transportation company was convicted of billing for services not provided and ordered to pay \$152,195.80 in restitution. In total, through criminal prosecutions of Medicaid providers, restitution of \$332,925.25 was ordered paid to the Department of Human Services.

The division also obtained a civil settlement with a personal care provider organization for more than \$75,000 for billing for undocumented services.

In addition, the division participated in settlements with several pharmaceutical companies, returning \$3,792,605 to the State.

The division also successfully prosecuted and assisted in the investigation of several theft and financial exploitation cases. The division prosecuted a door-to-door, living trust salesman who gained personal financial information from a vulnerable elderly woman and proceeded to bilk her of all of her liquid assets. The theft occurred over an 18-month period of time and the defendant obtained more than \$200,000 in the guise of loans from the victim. In another case, a personal care assistant was convicted of theft for falsely reporting hours providing care to a recipient and stealing funds from the recipient's bank account by using an ATM card. The defendant was ordered to pay the recipient more than \$12,000 for the ATM withdrawals. The division also obtained court ordered restitution of more than \$100,000 in additional prosecutions of financial exploitation cases.

The division receives referrals from citizens, police, county adult protection workers, and state agencies. In FY 07, the division reviewed 814 cases. The staff in the division follow up on 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 investigators assist local and federal prosecutors in the investigation phase of cases by interviewing, reviewing documentation, and scheduling out complex financial records obtained by search warrant. Division attorneys also assist local prosecutors and accept referrals to prosecute these cases around the State.

The division continues to provide training to social services, law enforcement, provider groups and citizen groups on the Vulnerable Adult Act.

## PUBLIC ENFORCEMENT SECTION

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### APPELLATE DIVISION

The Appellate Division handles felony appeals for the majority of the State's 87 counties, with the goal of upholding convictions that are properly obtained and also to shape and develop criminal case law to enhance the protection of Minnesota's citizens.

The cases handled by the Appellate Division in FY 07 involved, among other crimes: murder, sexual assault, drug distribution and manufacturing, child sexual abuse and felony assault.

Cases handled by the Appellate Division this fiscal year include, for example, the following: *State v. Six* (Fillmore County; kidnapping and criminal sexual conduct); *State v. Laspina* (Itasca County; conspiracy to manufacture methamphetamine); *State v. McLaughlin*, (Stearns County; first-degree murder); *State v. Bobadilla* (Kandiyohi County; first-degree criminal sexual conduct); *State v. Crow* (Redwood County; first-degree murder); *State v. Krasky* (Kandiyohi County; first-degree criminal sexual conduct); *State v. Jackson* (Itasca County; first-degree sale of methamphetamine); *State v. Shue* (Nobles County; kidnapping and first-degree criminal sexual conduct); *State v. Al Naseer* (Clay County; criminal vehicular homicide); and *State v. Wilson* (Cass County; second-degree murder).

The Appellate Division also handled numerous federal habeas corpus petitions challenging state-court convictions for non-metro counties during FY 07. Attorneys in the Appellate Division appeared on behalf of the State on 21 habeas petitions in federal district court and twice at the 8th Circuit Court of Appeals in FY 07.

In addition to handling appellate cases, division attorneys assist Attorney General's Office prosecutors by providing legal research and preparing legal memoranda, and assist local prosecutors on legal questions. Attorneys in the division also handle property forfeiture proceedings arising from criminal conduct.



## **PUBLIC PROTECTION DIVISION**

The Public Protection Division provides prosecutorial assistance to county attorneys and local law enforcement agencies 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. Representative work during FY 07 included:

- Convicted Douglas Saunders of first-degree murder in Cottonwood County. Saunders walked into his place of employment and shot Howard Hockel, a co-worker. Saunders received a life sentence. Saunders was also found to be mentally ill and dangerous and was committed to the security hospital.
- Convicted Kent Jones of first-degree murder in Sherburne County. Jones raped and murdered Linda Jensen at her home. Jones's first conviction for the murder was overturned by the Minnesota Supreme Court, and the Attorney General's Office prosecuted the case on remand. Jones is serving a sentence of life in prison for the conviction.
- Convicted Jose Medrano of first-degree murder for the death of Jose Gallegos in Dodge County. Medrano and his co-defendant, Salvador Gallegos, killed Jose and dumped his body in a nearby ditch. Jose is Salvador Gallegos's uncle. Medrano is serving a life sentence. The charges against Salvador Gallegos are still pending.
- Convicted Robert Hughes of first-degree murder for the shooting death of his wife, Tami, in Freeborn County. Hughes shot his wife in their home as she was preparing to leave him. Hughes is serving a life sentence.
- Convicted Dirk Goelz of first-degree murder for the death of his girlfriend, Kerri Robinson, in Renville County. Goelz shot Robinson in their home as she was preparing to leave him. Goelz is serving a life sentence.
- Convicted Daniel Anderson of first-degree murder for the death of his girlfriend's 19-month-old son in Wilkin County. Anderson beat the child to death because of a fight he had with the child's mother. Anderson is serving a life sentence.
- Convicted four men for the gang-related murder of Michael Littlewolf in Cass County. Michael Fineday, Angelo Blackfeather, Kendall Ogema, and Mitchell Lohnes all pled guilty to second-degree murder. All of the defendants received an upward departure as a sentence, except Ogema. All of them were also convicted of committing a crime for the benefit of a gang.

- Convicted Juan Herrera Serrano of second-degree murder for the death of his girlfriend's two-year-old son in Stevens County. Herrera Serrano beat the child to death while babysitting him.
- Convicted Tina Mathews of second-degree murder for the death of Randy Silbaugh in Meeker County. Mathews stabbed Silbaugh during an argument in her father's home.
- Convicted Kathy Rabideau of second-degree murder for the death of Susan Keezer in Clearwater County. Rabideau stabbed Keezer 249 times during a domestic argument.
- Convicted James Payne of second-degree murder in Wadena County for the murder of his brother.
- Conducted grand jury proceedings in two cases and obtained first-degree murder indictments.
- Prosecuted numerous manufacturers and dealers of methamphetamine in multiple counties throughout the state.
- Provided continuing legal advice and prosecution support to the Metro Gang Strike Force.
- Provided continuing legal advice and assistance to the Forensic Laboratory Advisory Panel for the Bureau of Criminal Apprehension, the Homicide Subcommittee of the Child Mortality Review Board, the Advisory Committee on the Rules of Criminal Procedure, CriMNet, the Internet Crimes Against Children Task Force, the Stop it Now Advisory Committee, the Gang and Drug Oversight Council, the Metro Gang Strike Force, and the Environmental Crimes Screening Committee.
- Provided continuing review of Extradition paperwork for the Office of the Governor.

Division attorneys provide assistance to county attorneys 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 in preparation of the commitment petition, handling of pre-trial matters, and the handling of the commitment hearing and any appeal.

The number of these commitments and complexity of the cases increased significantly during the latter half of FY 04, a pace which has continued since that time.

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 continues to grow.

The division's attorneys also handle 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 in which the sex offender will be released. The division also advises the BCA on registration issues and DNA collection issues, and the Department of Corrections on community notification issues.

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.

## **PUBLIC SAFETY DIVISION**

The Public Safety Division represents the Commissioner of Public Safety at thousands of implied consent hearings each year in which drivers contest the revocation of their licenses due to having been intoxicated while driving. 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 5,200 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 2006 DWI/IC Elements handbook, utilized statewide by prosecutors, judges, defense attorneys and law enforcement professionals.
- Handled over 185 district court challenges and resulting appeals 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 Public Safety Division continues to face a significant challenge from a dramatically increased workload. 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 07, nearly 15 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 last 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 the state's district and appellate courts.

For example, in FY 96, the Public Safety/Gambling Division defended 2,121 implied consent cases in district court. In FY 07, it handled 5,209 implied consent cases, a 145 percent increase from FY 96. Implementation of the felony DWI law and recent challenges over accessibility to the Intoxilyzer instrument's computer source code continue to increase division caseload. Moreover, the Minnesota Supreme Court's recent rulings in *Fedziuk v. Commissioner of Public Safety*, 696 N.W.2d 340 (Minn. 2005) and *Bendorf v. Commissioner of Public Safety*, 727 N.W.2d 410 (Minn. 2007) resulted in a sharp increase in petition filings during FY 06 and continued throughout FY 07. The Court's implied mandate that all implied consent hearings be held within 60 days of filing of the petition for judicial review and challenges to the Hennepin County DWI "Fast-Track" program and procedures will continue to present a significant challenge for both the district courts and the division in FY 08.

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 Racing Commission, this division represents the 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 daily activities and regulation of the card club at Canterbury Park. The current construction and projected opening of the North Metro Harness Race Track in Anoka County is expected to significantly increase division workload during FY 08. The division provides the State Lottery with a wide range of advice, from internet issues to lottery retailer contract suspensions, and represents that 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 on that client's behalf in 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 \$50,000.00 during FY 07.

## **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 and its Energy Facilities Permitting staff, before the Minnesota Public Utilities Commission (Commission), Office of Administrative Hearings, federal agencies, and state and federal courts. In FY 07, the division provided legal advice and representation to the Department on many issues such as:

### **Telecommunications**

- ***Merger/Acquisition.*** The merger of SBC, a former Bell company, and AT&T, and the associated asset transfer, required continued review for purposes of monitoring and enforcement. The division provided the Department legal advice in connection with the matter.
- ***Wholesale Cost/Prices.*** The division is providing pretrial assistance and legal advice regarding a Commission-ordered contested case proceeding on the issue of whether certain of Qwest's wholesale prices are reasonable. Lawyers responded to legal motions regarding the Commission's authority, and expect trial to take place in the fall of 2007.
- ***Local Service Competition.*** The division lawyers assisted the Department in on-going litigation regarding Qwest's attempts to avoid federal and state regulation of network elements needed by Qwest's competitors, including Qwest's reclassifying certain elements as non-competitive, and commingling of regulated and non-regulated elements into bundled service packages. Pretrial discovery and testimony has occurred, in anticipation of pending trials. Lawyers provided litigation and trial support in contested case proceedings that concerned disputed interconnection agreements between Qwest and its competitors.

- ***Qwest Forbearance from Dominant Carrier Regulations.*** Qwest has filed with the FCC a request to be free from federal regulation by seeking permission to be classified as a “non-dominant” carrier. Division lawyers are assisting the Department on this extensive matter, which would, if granted, have a significant effect on Minnesota consumers of telecommunications and the competitive carriers that serve them.
- ***Investigation of Anti-Competitive Conduct/Interconnection.*** The division represented the Department in various contested case proceedings involving allegations that Qwest violated competitive requirements including alleged overcharging as well as failing to make available required parts of the Qwest network. The Commission ruled favorably for competitors. Two significant pending matters concern Qwest’s compliance with federal requirements regarding wire centers shown to be “impaired.” The division lawyers have assisted the Department in pretrial proceedings.
- ***Interconnection of Voice, Data and Internet Networks.*** Division lawyers assisted the Department in a series of complex matters of first impression in Minnesota regarding the interplay of the traditional public telephone network and the internet, and Qwest’s obligations as an incumbent telephone company to its competitors that operate internet-based networks. In one matter, following administrative trial, the Commission denied expansion of Qwest’s responsibilities, contrary to the request of a competitive local exchange carrier. Other matters are pending and division lawyers are assisting with pre-trial proceedings.
- ***Price Discrimination and Untariffed Rate Cases.*** The division represented the Department in several actions involving authority of states to regulate intrastate telecommunications. The Department filed several complaints against AT&T and its wholesale carrier customers, alleging that these carriers entered into and concealed from the public and regulators discriminatory contracts that give AT&T preferential pricing for termination of in-state long-distance calls. Settlements were reached in all of these matters, except for two against AT&T and its affiliates, and these matters proceeded to trial. In the first of these trials, the Administrative Law Judge (ALJ) found that AT&T had intentionally concealed the illegal pricing and should be fined, and recommended that the Commission investigate whether AT&T, in a related matter, engaged in fraud on the Commission. The second case against an AT&T affiliate, TCG Minnesota, has been tried, with a decision expected in September, 2007.
- ***Dial-Up Telephone Access to Internet Service Providers (ISPs).*** The division represented the Department in a series of matters of first impression involving complaints by various competitive local exchange carriers (CLECs) against incumbent local exchange carriers (ILECs). The claim is that ILECs are blocking or charging wrongful fees for transport of dial-up calls from ILEC phone customers to CLEC ISP customers, where the CLECs are assigning local Minnesota phone numbers to ISP network access servers located in other states. The Department has been successful in securing decisions favoring consumer access to the internet, especially in rural areas, where few other options may be available for internet access.

- ***Complaint Regarding Phantom Traffic.*** The division represented the Department in this action by rural phone companies against Qwest for failing to provide sufficient call identification information to allow them to bill other carriers and voice over internet providers (VoIP) who pass voice traffic through Qwest's network for termination on the rural carrier's networks. Although a settlement was reached, and approved on an interim basis by an ALJ, a recent FCC ruling may cause the settlement to be revisited and amended, and the ALJ has ordered a scheduling conference on how to proceed.
- ***Local Service Competition - Network Elements and Resale.*** Since the 1996 Federal Telecommunications Act, Qwest has been required to lease certain parts of its network to other carriers at cost-based prices. Division lawyers provided pretrial assistance to the Department in a large pricing docket involving hundreds of network elements and dozens of expert witnesses. The matter is scheduled for trial during winter 2007-08.
- ***Disconnection of Direct CLEC to CLEC Connection.*** In a case of first impression in Minnesota, a competitive carrier seeks to disconnect another competitive carrier from the current efficient direct connection they maintain regarding local calling, where doing so may negatively affect emerging competition with Qwest in the tandem transit aspect of exchanging traffic. The Department has a statutory obligation to determine if the public interest requires continued connection. Division lawyers assisted the Department in pretrial matters, with an expedited administrative trial scheduled to take place in July 2007.
- ***Alternative Form of Regulation ("AFOR") Petitions.*** The Division attorneys provided legal research and analysis concerning the rate implications of ILEC AFOR petitions.
- ***Universal Service.*** Division attorneys provided legal assistance regarding state implementation of a federal universal support fund ("USF") for all local exchange carriers and wireless providers that receive USF funding.
- ***Prepaid Calling Cards.*** Lawyers for the division assisted the Department in review a recent FCC ruling concerning federal treatment of prepaid card service providers as telecommunications service providers. Issues concern payment of federal and state access charges and responsibility for contributing to the universal service fund.
- ***Introduction of 811 Service.*** Division attorneys continued to advise the Department regarding Qwest's proposed request for payment from a federally mandated three digit (811) "one-call" notification of excavation plans.
- ***Rulemaking.*** The division provided legal advice to the Department in informal stages of rulemaking proceeding regarding State Universal Service funding and Intrastate Access Charge reform.

## Energy

- ***Merger/Acquisitions.*** The division provided legal advice regarding accounting-type compliance issues in the merger of natural gas utility Aquila Natural Gas Company (doing business in Minnesota as Peoples Natural Gas and NMU) and Wisconsin Public Service Corporation.
- ***Asset Sales.*** Lawyers assisted the Department in post-trial proceedings before the Commission concerning necessary protections for Minnesota ratepayers as to sale of Alliant Energy's (Interstate's) Iowa nuclear plant (no future ratepayer responsible for "stranded" investment since the nuclear plant did not serve Minnesota ratepayers). Division attorneys provided legal advice concerning Minnesota Power's sale of transmission rights. Pretrial proceedings have taken place in a case of first impression in which Alliant Energy proposes to sell all of its transmission assets to an entity that is not regulated by the Minnesota Commission. Division attorneys are assisting the Department in opposing the proposed asset sale; trial is scheduled for fall of 2007.
- ***Rate Increase Requests.*** The division represented the Department in litigation of a rate increase request of the largest regulated electric company, Xcel Energy. Division attorneys assisted the Department with compliance issues involving recent rate increase orders for Great Plains Natural Gas, and Alliant (Interstate), and the largest regulated natural gas utility, CenterPoint.
- ***Certificate of Need for Electric Transmission Line Construction and Route Permitting.*** The division advised the Department with respect to a number of electric transmission line need requests and associated permitting matters. Significant trial proceedings took place in the Big Stone II petition filed by several utilities for multiple transmission lines running from a planned coal plant in South Dakota, and pretrial proceedings occurred in the contested Xcel/GRE Chisago transmission line request. Several transmission line construction requests met with little to no opposition, such as the Badoura project, the Great River Energy Mud Lake line, and various lines required for transmission of wind generated electricity like the Buffalo Ridge "BRIGO" line. Lawyers provided extensive legal assistance and litigation support with respect to the Department's efforts to process route permits for these transmission facilities.
- ***Electric Transmission Lines Operation/Control.*** On-going advice was provided by division attorneys regarding the interpretation of federal as well as state enforcement jurisdiction for the regional Midwest Independent System Operator. Important issues of cost recovery continue to involve the division attorneys.
- ***Certificate of Need for New Construction of Electric Generating Plants.*** The division represented the Department in a number of cases including Great River Energy's request for a peaking electric plant in Cambridge, Minnesota, which the Commission approved.
- ***Coal Gasification Electric Generating Plant.*** Attorneys provided the Department with pretrial support and, following submission of the written record to the ALJs, with post-



trial briefing regarding the request of Excelsior Energy, an independent power producer, for contract terms requiring Xcel Energy's ratepayers to pay for electricity generated by Excelsior's proposed plant. Following extensive proceedings, the Commission made certain rulings and ordered parties to negotiate possible contract terms.

- ***Certificates of Need and Route Permitting for Underground Pipeline Construction.*** The division provided significant trial and post-trial assistance regarding the certificate of need and permitting requests for a nearly 300 mile long crude oil pipeline filed by Minnesota Pipeline Company to the Flint Hills refinery in Rosemount, Minnesota, which the Commission approved. Lawyers have assisted with pretrial proceedings in the Enbridge Pipeline matter, involving a proposed petroleum pipeline to run from Clearbrook, Minnesota to Chisago.
- ***Automatic Pass-through Charges.*** The division provided legal advice concerning public utilities automatic adjustment filings regarding energy costs which result in automatic rate changes for retail customers. The Commission is considering whether automatic adjustment requirements should be changed to better protect ratepayers in the event that a utility fails to pass through revenues as well as costs.
- ***Nuclear Waste Storage.*** Division lawyers gave post-trial assistance and compliance support to the Department regarding the contested case proceeding involving Xcel Energy's request to expand its storage of spent nuclear fuel at its Monticello Nuclear Generating Facility. The Commission approved the need certificate, as affirmed following no contrary decision by the 2007 Legislature.
- ***Disputed Tax Payments Under Wind Contracts.*** Division lawyers provided legal briefing and argument before the Commission to support the Department's opposition to wind generator owners' request for a contract amendment to conform to "the owner's bid documents" that would have increased costs for ratepayers for tax payments the Department believed were included in the bid price. The Commission denied the owner's efforts.
- ***Conservation Improvement Plan ("CIP") and Renewable Energy matters.*** Attorneys advised the Department in analyzing programs designed to meet statutorily required utility conservation spending, and new legal requirements regarding renewable energy standards, as requested.

# SOLICITOR GENERAL SECTION

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## CIVIL LITIGATION DIVISION

The Civil Litigation Division serves a number of 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 regard to a broad range of employment issues and claims. Third, the division litigates tort claims brought 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 validity of legislation forbidding the sale of mortgage-trigger lists;
- the validity of legislation prohibiting railroads from withholding or delaying medical treatment to injured workers;
- the judicial branch's interpretation of employee-transfer legislation; and
- the constitutionality of the standard of proof applied in physician disciplinary proceedings.

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"), Federal Labor Standards Act ("FLSA"), and claims of discrimination and harassment under Title VII. The division also represents the State in lawsuits involving labor issues. 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.

With respect to employment lawsuits concluded in the period January 1, 2007 to August 31, 2007, the division has saved the State in excess of \$2.5 million based upon demands made and the ultimate resolution.

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 or sexual assaults occurring in or as a result of activities arising out of the institutions they operate; and claims against the Department of Natural Resources arising from snowmobile and ATV accidents on state trails. During FY 07 the division saved the State more than \$4.5 million in its resolution of personal injury litigation.

The division represents the PUC in litigation in both state and federal courts. In the past year, the division has defended PUC decisions in state court involving the PUC's determination of rates set in an electric rate case, the issuance of a certificate of need and routing permit for the MinnCan petroleum pipeline, compensation due for acquisition of an electric service territory, and energy costs to be recovered via the automatic adjustment mechanisms outlined by statute. The division successfully defended the PUC in the two cases which the Court of Appeals has decided in the last year.

In federal court, the division currently represents the PUC in its appeal of a Federal Energy Regulatory Commission ("FERC") order interpreting federal law to authorize the FERC to site an electric transmission line in a national interest electric transmission corridor even where the State has lawfully denied a permit.

The division also advises the PUC on energy, siting and telecommunications matters that come before the agency. Energy matters for which the PUC seeks advice involve, among others, the rates and practices of electric and natural gas utilities providing energy services in the State of Minnesota. The division also advises the PUC on matters related to the siting and routing of large energy facilities, including petroleum and natural gas pipelines, electric transmission lines, and electric generating facilities. In addition, the division advises the PUC on telecommunications matters before the PUC including interconnection agreements between telecommunications providers, complaints filed with the PUC alleging violations of state telecommunications law, and rate and service quality issues. Finally, the division provides

counsel to the PUC on issues related to the implementation of legislative directives, such as the development of the renewable energy credit tracking system.

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

The Public Finance Division represents the departments of Administration, Agriculture, Commerce, Employment and Economic Development, Finance, Labor and Industry, and Natural Resources, as well as the Housing Finance Agency, Iron Range Resources, Legislative Auditor, Minnesota State Board of Investment, Secretary of State, State Auditor, Board of Water and Soil Resources, 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 07 included:

- 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 requests for formal legal opinions and a variety of requests for informal legal guidance from local governments.
- Advised the Department of Administration on various real estate matters including easements across state land, land patents, consent to sublease of state-owned property, subordination agreements, and the potential conveyance of state land to the University of Minnesota.
- Advised the Department of Administration on plant and energy management agreements and various real estate matters, including disposition of surplus property from regional treatment centers.
- Assisted the Department of Administration in a Decision to debar a contractor from doing business with the State on the grounds that the company's owner/CEO had been convicted of defrauding the federal government.
- Represented the Department of Agriculture ("MDA") in various matters, including United States Supreme Court in an Amicus Brief in support of Nebraska's law limiting corporate farming (similar to Minnesota's law); responses to three petitions for pesticide environmental assessment worksheets; an administrative procedure to revoke a food handler's license of a slaughter facility; a quarantine of firewood; ethanol makeup payments; protecting medical data; and a civil action to enforce penalties for pesticide violations.
- Advised the Board of Animal Health on issues relating to its publications.

- 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.
- Advised and represented the 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> and provided advice and representation to the Petroleum Release Tank Compensation Board (“Petrofund”) and the Real Estate Education, Research, and Recovery Fund, both of which are administered by the Department of Commerce.
- Handled 53 contested cases for Department of Commerce involving disciplinary action against licensees; obtained over \$647,000 in civil penalties and settlements, including disciplinary actions against mortgage originators; real estate salespersons; liquidation of collections agencies; securities salespersons; insurance salespersons; and notaries public.
- Represented the Department of Commerce in enforcing the Unlawful Gasoline Sales Act in a contested case and appellate proceeding which resulted in a \$140,000 civil penalty against Midwest Oil of Minnesota.
- Advised the Department of Employment and Economic Development and drafted documents for new pathways to employment program.
- Represented and advised the Commissioner of Finance in connection with the Northwest Airlines bankruptcy settlement and redemption of state bonds issued for the Duluth Aircraft Maintenance Facility.
- Represented the Commissioner of Finance in connection with a collateral legal challenge to expenditures made pursuant to temporary court order for maintenance of essential government functions pending legislative action on necessary appropriations.
- Facilitated bond issuance by providing legal consultation to state agencies for over \$2.2 billion in general obligation and revenue bonds.
- Represented the Commissioner of Finance in a claim made against the Torrens Assurance Fund.
- Represented the Departments of Finance, Revenue, Human Services, and Employment and Economic Development in state district court in a case stemming from twenty-one state checks and warrants that the plaintiff check-cashing business had cashed,

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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 AGO’s Telecommunications and Energy Division handles representation of the Department with respect to telecommunications and energy issues.

notwithstanding the fact that the instruments had been reported lost and the State entities had stopped payment on them.

- Advised the Housing Finance Agency (“HFA”) regarding numerous loans to preserve low income housing and several variable rate bond transactions with interest rate swaps.
- Represented the HFA in district court and before the Court of Appeals in a case regarding a mortgage redemption; an action asserting the existence of a road across a wildlife management area; an action asserting a prescription easement over a wildlife management area; an action asserting private ownership of a portion of a state train.
- Advised the Department of Human Services in connection with several software design and development contracts.
- Advised Iron Range Resources Agency and Board (“IRR”) regarding various economic development loans and equity transactions, including Mesabi Nugget, Franconia Minerals (non-ferrous minerals extraction), Minnesota Steel Industries (integrated steel plant), Hibbing-Virginia Biomass Energy Project, and Excelsior Energy; workouts, collections, data practices requests and trademark registrations; licenses and oppositions, various land sales, acquisitions, development agreements, facility management agreement, master association, common interest community, title registration, and easement matters at Giants Ridge; employment matters; education facilities revenue bond issuance; Motorplex condemnation and various related real estate transactions, title work and easements; Northwest Airlines bankruptcy loan claim settlement; advice regarding various taconite production tax assessment and distribution statute enforcement and amendment; bankruptcy claim settlement matters involving LTV Steel, National Steele Pellet Co., and Eveleth Taconite Company; and ore producer financial assistance programs.
- Advised iSeek Solutions regarding contract, intellectual property and licensing matters and drafted licensing and services level agreements for marketing of State-owned software.
- Advised and represented the Department of Labor and Industry, Construction Codes and Licensing Division, including the Contractor’s Recovery Fund; prosecuted numerous disciplinary actions against residential building contractors, remodelers, roofers, and manufactured home installers for violations, including unlicensed building contractor activity, failure to satisfy judgments, failure to complete jobs, and code violations.
- Opened 131 files against licensed and unlicensed builders and obtained over \$727,800 in civil penalties and settlements; provided legal advice, appeared in district court, and/or drafted pleadings that stipulated to payment of more than \$2.4 million to victimized

homeowners on 89 applications to the Contractor's Recovery Fund;<sup>2</sup> and obtained summary judgment on 4 ineligible claims to the Contractor's Recovery Fund totaling \$127,150.

- Advised and represented the Secretary of State in various election, corporate, and trade name registration matters, including matters pertaining to the wording of the ballot question for a constitutional amendment; candidate nicknames and petitioning requirements and the defense of taxpayer action concerning cancellation of a service contract.
- Advised the Office of the State Auditor on several local government finance issues, including funding for retiree insurance benefits and tax increment financing ("TIF") matters.
- Advised the Minnesota State Board of Investment ("MSBI") in connection with various investment management agreements and investments.
- Defended the Office of State Demographer and MnDOT against challenges to population estimate used in apportioning municipal street aid.
- Advised numerous small boards and agencies, including the boards of Accountancy, Architecture, Arts, Barbers and Cosmetologists, Crime Victims Reparations, Electricity, Peace Officer Standards and Training, Teaching, and School Administrators and represented those boards in 5 contested matters.
- Advised and represented the Office of Administrative Hearings in connection with several municipal boundary adjustment matters and constitutional challenges to enforcement of the Fair Campaign Practices Act.
- Filed four appeals to the Minnesota Court of Appeals regarding the denial of claims and argued three cases before the Minnesota Court of Appeals on behalf of the Public Safety Officers Benefit Eligibility Panel.
- Advised Office of Higher Education regarding electronic transactions and signatures in connection with student loan programs.
- Represented the Office of Lawyers Professional Responsibility in an appeal from a defamation action.
- 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.

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<sup>2</sup> The actual payment amount will be reduced by the Contractor's Recovery Fund due to prorating claims to the maximum \$75,000 per licensee limit.

- Advised MnSCU and drafted documents for the following projects: banking services for five MnSCU campuses; food service agreements; electronic check conversion notices; grant sub award agreements; occupational skills program training experience agreement; software license agreements; and affiliation agreements with numerous health care facilities for clinical training of students.
- Represented DNR in United States District Court, Minnesota District, in two legal challenges brought under the federal Endangered Species Act by animal protection groups to DNR's trapping and snaring regulatory and licensing program; settling one case and pursuing summary judgment in the other.
- Provided general advice and district court representation to DNR Enforcement regarding numerous matters, including the Wetlands Conservation Act, and vehicle and equipment confiscations.
- 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); White Earth settlement land transfers; and issues of tribal sovereignty and state-tribal jurisdiction.
- Assisted DNR with approximately 114 real estate acquisitions totaling over \$21.8 million and involving approximately 10,410 acres of land and prepared title opinions and drafted deeds with respect to approximately 22 land exchanges.
- Represented DNR in various district court and Court of Appeals cases involving real estate transactions and disputes; condemnation proceedings; responded on behalf of DNR in approximately 104 quiet title actions and land registrations in order to preserve the State's mineral interests and regulatory rights on navigable waters; and in an action relating to forfeiture of severed mineral rights.
- Represented the DNR in several district court cases in which a petition was filed to vacate certain land (typically roads) that abut upon, or provide access to, a public water.
- Represented DNR Waters Division in numerous 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.
- Represented DNR Waters Division in two administrative appeals of DNR denials of certification of variances granted by municipalities to local Lower St. Croix River setback ordinances and have provided ongoing advice regarding other certification issues, and negotiated settlements arising in DNR's St. Croix River shoreline and floodplain regulatory programs.



- Provided legal services to DNR relating to prescriptive easements across wildlife lands, establishment of Scientific and Natural Areas, issues arising in connection with the Wildlife Division's extensive regulatory programs.
- Successfully argued before the Minnesota Court of Appeals on behalf of DNR to affirm a district court order denying intervention into a matter brought by DNR against a Watershed District to restore a public water drained by the District's drainage ditch maintenance work.
- Represented DNR Fisheries Division in an administrative appeal of a private fish hatchery license revocation and the possible sale of the facility to DNR.
- Represented DNR before the Minnesota Court of Appeals in a case challenging DNR's denial of a rulemaking petition which requested that DNR convert certain voluntary alternative shoreland standards developed for five counties in north-central Minnesota into mandatory statewide rules.
- Advised the Minnesota State Academy for the Blind and drafted documents for donation and construction of a bike path and practice area for orientation.
- Advised the Office of Technology regarding contracts and arrangements to complete or enhance fiber network facilities.
- Advised the Department of Transportation regarding contract and finance issues related to the North Star Commuter Rail project.
- Advised the Board of Water and Soil Resources ("BWSR") on real estate issues related to conservation easements, including reviewing approximately 82 Reinvest in Minnesota ("RIM") easement files, and the wetland banking program.
- Advised and represented BWSR on Wetland Conservation Act program regulatory appeals, and represented both BWSR and DNR in administrative proceedings in district court and Court of Appeals involving implementation of the Wetland Conservation Act.
- Represented BWSR before the Court of Appeals in a case stemming from BWSR's decision to terminate the South Two River Watershed District in central Minnesota.
- Represented and advised the Minnesota Zoo in connection with construction, consulting, contracts, leases and license agreement.

## 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 on behalf of MnDOT against entities that perform defective work, fail to pay employees legally mandated wages, 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 07 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 defends MnDOT against claims that its projects have resulted in inverse takings and provides legal assistance in voluntary sales of real estate for transportation projects.
- Provided the Department of Transportation with general 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, advertising sign permits, and railroad crossings.
- 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 Services.
- Represented the Minnesota National Guard regarding legal matters, including contract review and real estate transactions.
- Represented the Minnesota State College and University Board in construction contractor claims.
- Advised the Commissioner of Transportation in planning and coordinating responsibilities for a major rail transit project.

**APPENDIX A: SERVICE HOURS**  
**By Agency or Political Subdivision for FY 2007**

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<b>Partner Agencies</b>				
Administration--Risk Management		2,269.4		\$ 207,032.80
Corrections (3)	2,051.8	2,595.7	\$ 195,815.00	\$ 255,739.90
Education Department	1,888.0	2,687.4	\$ 190,688.00	\$ 266,523.80
Gambling Control Board	300.0	280.1	\$ 30,300.00	\$ 28,290.10
Health	6,168.0	6,451.1	\$ 600,000.00	\$ 625,405.50
Housing Finance Authority	5,250.0	3,986.8	\$ 530,250.00	\$ 402,666.80
Human Services	24,219.3	24,098.4	\$ 2,335,750.00	\$ 2,330,130.20
Iron Range Resources & Rehabilitation (3)	2,800.0	2,800.0	\$ 282,800.00	\$ 282,800.00
Medical Practices Board	13,107.0	13,854.1	\$ 953,819.00	\$ 1,071,026.50
Minnesota Racing Commission	500.0	397.0	\$ 50,500.00	\$ 40,097.00
Minnesota State Retirement System		86.1		\$ 8,696.10
MnSCU	9,100.0	9,398.5	\$ 854,700.00	\$ 860,643.30
Natural Resources	7,446.0	7,865.6	\$ 720,030.00	\$ 725,683.20
Petro Board		41.3		\$ 4,171.30
Pollution Control	19,527.0	18,973.7	\$ 1,903,227.00	\$ 1,849,625.30
Public Employees Retirement Association		1,017.1		\$ 102,727.10
Public Safety (3)	1,500.0	1,500.0	\$ 151,500.00	\$ 151,500.00
Teachers Retirement Association		357.6		\$ 36,117.60
Transportation	21,766.0	17,150.7	\$ 2,130,930.00	\$ 1,715,426.10
<b>TOTAL PARTNER AGENCIES</b>	<b>115,623.1</b>	<b>115,810.6</b>	<b>\$ 10,930,309.00</b>	<b>\$ 10,964,302.60</b>
<b>Specialized Boards</b>				
Accountancy Board		162.4		\$ 14,682.00
Agricultural Chemical Response Comp Board		7.0		\$ 385.00
Animal Health Board		31.6		\$ 3,191.60
Architecture Board		224.9		\$ 22,714.90
Barber Board		94.7		\$ 8,253.70
Client Security Board		512.9		\$ 38,936.70
Crime Victims Reparations Board		359.5		\$ 34,998.50
Land Exchange Board		307.1		\$ 30,971.10
Peace Officers Standards and Training Board		76.9		\$ 7,766.90
Private Detective Board		183.2		\$ 18,503.20
School Administrators Board		185.5		\$ 18,735.50
State Fair Board		36.9		\$ 3,726.90
State Investment Board		305.5		\$ 28,159.90
Teaching Board		680.3		\$ 67,109.50
Zoological Board		55.8		\$ 5,180.40
<b>SUBTOTAL</b>		<b>3,224.2</b>		<b>\$ 303,315.80</b>
<b>Health Boards/Offices</b>				
Behavioral Health & Therapy Board		21.0		\$ 1,983.00
Chiropractic Board		1,446.1		\$ 117,913.30
Dentistry Board		3,059.8		\$ 230,826.00
Dietetics & Nutrition Practice Board		1.7		\$ 171.70
Emergency Medical Services Regulatory Board		390.2		\$ 32,997.80
Health Professionals Services Program		14.4		\$ 1,362.40
Licensed Drug & Alcohol Counselor Program		660.3		\$ 47,581.90
Marriage & Family Therapy Board		203.1		\$ 12,748.30
Mental Health Practice Office		8.1		\$ 546.70
Nursing Board		6,565.3		\$ 488,911.70
Nursing Home Administrators Board		76.1		\$ 5,639.10
Optometry Board		75.0		\$ 5,863.80
Pharmacy Board		472.5		\$ 35,670.50
Physical Therapy Board		417.6		\$ 29,467.80
Podiatry Board		121.7		\$ 12,070.90
Psychology Board		2,540.5		\$ 175,027.90
Social Work Board		1,097.6		\$ 64,167.60
Veterinary Medicine Board		2,176.8		\$ 197,560.60
<b>SUBTOTAL</b>		<b>19,347.8</b>		<b>\$ 1,460,511.00</b>
<b>Higher Education</b>				
Higher Education Board		1.3		\$ 108.30
Higher Education Facilities Authority		9.8		\$ 989.80
Higher Education Services Office		376.2		\$ 36,326.40
<b>SUBTOTAL</b>		<b>387.3</b>		<b>\$ 37,424.50</b>

**APPENDIX A: SERVICE HOURS**  
By Agency or Political Subdivision for FY 2007

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<i>Other Executive Branch Agencies</i>				
Administration Department		742.1		\$ 69,924.30
Administrative Hearings Office		19.2		\$ 1,870.20
Agriculture Department		494.8		\$ 48,429.20
Amateur Sports Commission		215.5		\$ 21,765.50
Archaeologist Office		0.8		\$ 80.80
Black Minnesotans Council		27.0		\$ 2,027.80
Campaign Finance Board		520.7		\$ 39,715.30
Capitol Area Architectural Planning Board		64.1		\$ 6,474.10
Center for Arts Education		65.8		\$ 6,480.20
Chicano/Latino Peoples Affairs Council		9.0		\$ 909.00
Commerce Department		7,670.4		\$ 773,900.80
Corrections Department (3)		4,063.2		\$ 352,800.00
Corrections Department/Community Notification		1,086.0		\$ 95,177.60
Disability Council		2.1		\$ 212.10
Employment & Economic Development Department		1,080.7		\$ 102,057.50
Employee Relations Department		105.7		\$ 10,675.70
Environmental Quality Board		132.3		\$ 13,362.30
Executive Council		30.3		\$ 2,876.30
Explore Minnesota Tourism		30.8		\$ 2,655.40
Faribault Academies		39.6		\$ 3,617.80
Finance		1,420.4		\$ 141,634.20
Governor's Office		352.6		\$ 35,612.60
Historical Society		4.0		\$ 404.00
Human Rights Department		1,336.5		\$ 128,348.70
Indian Affairs Council		0.7		\$ 70.70
Iron Range Resources & Rehabilitation (3)		144.6		\$ 14,572.40
Judiciary Courts		1,073.6		\$ 106,313.00
Labor and Industry Department		5,066.4		\$ 505,179.00
Law Examiner's Board		93.2		\$ 9,413.20
Lawyer's Professional Responsibility Board		123.9		\$ 11,823.90
Legislative Auditor		29.4		\$ 2,969.40
Legislature		12.9		\$ 1,302.90
Mediation Services Bureau		39.3		\$ 3,969.30
Military Affairs Department		219.1		\$ 21,558.70
Minnesota Commission Serving Deaf & Hard of Hearing People		12.4		\$ 1,252.40
Minnesota Gang Strike Force		72.4		\$ 7,312.40
Office of Enterprise Technology		151.1		\$ 11,318.90
Ombudsman for Mental Health/Retardation Office		205.4		\$ 18,974.40
Ombudsperson for Families		126.9		\$ 12,816.90
Public Defender, Local		125.6		\$ 12,685.60
Public Defender, State		2.9		\$ 292.90
Public Safety Department (3)		32,770.5		\$ 2,898,621.90
Public Utilities Commission		3,400.3		\$ 342,238.90
Revenue Department		7,999.7		\$ 806,240.10
Rural Finance Authority		34.4		\$ 3,474.40
Secretary of State		534.7		\$ 53,540.10
Sentencing Guidelines Commission		29.9		\$ 3,019.90
State Arts Board		55.8		\$ 5,635.80
State Auditor		13.9		\$ 1,403.90
State Lottery		17.4		\$ 1,228.40
Strategic and Long Range Planning Office		269.9		\$ 27,259.90
Veterans Affairs Department		15.2		\$ 1,323.60
Veterans Homes Board		229.6		\$ 22,789.40
Water & Soil Resources Board		563.8		\$ 56,851.80
<b>SUBTOTAL</b>		<b>72,948.5</b>		<b>\$ 6,826,465.50</b>

**APPENDIX A: SERVICE HOURS**  
**By Agency or Political Subdivision for FY 2007**

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<b>OTHER GOVERNMENT</b>				
Aitkin County Attorney		30.3		\$ 3,060.30
Becker County Attorney		10.7		\$ 1,080.70
Carver County Attorney		28.6		\$ 2,888.60
Chisago County Attorney		220.6		\$ 17,685.20
Clearwater County Attorney		88.2		\$ 7,367.20
Cook County Attorney		21.8		\$ 2,201.80
Cottonwood County Attorney		309.6		\$ 26,002.60
Dodge County Attorney		1,221.2		\$ 95,888.40
Freeborn County Attorney		434.8		\$ 33,118.60
Houston County Attorney		35.5		\$ 3,585.50
Hubbard County Attorney		13.5		\$ 1,363.50
Kanabec County Attorney		663.8		\$ 49,826.00
Koochiching County Attorney		2.0		\$ 179.00
Le Sueur County Attorney		32.6		\$ 3,292.60
Lincoln County Attorney		44.6		\$ 2,802.60
Mahnomen County Attorney		13.3		\$ 1,343.30
Meeke County Attorney		89.8		\$ 7,432.20
Mille Lacs County Attorney		200.6		\$ 16,281.60
Morrison County Attorney		285.5		\$ 22,372.50
Nicollet County Attorney		0.4		\$ 40.40
Nobles County Attorney		0.6		\$ 60.60
Polk County Attorney		16.0		\$ 1,616.00
Ramsey County Attorney		39.5		\$ 3,989.50
Redwood County Attorney		307.6		\$ 28,100.60
Renville County Attorney		653.8		\$ 52,174.00
Rock County Attorney		197.3		\$ 13,694.30
Sherburne County Attorney		1,994.1		\$ 151,273.30
Stevens County Attorney		730.2		\$ 54,145.00
Swift County Attorney		40.0		\$ 3,304.00
Todd County Attorney		34.5		\$ 3,484.50
Wadena County Attorney		395.7		\$ 33,295.70
Waseca County Attorney		333.2		\$ 26,840.60
Wilken County Attorney		970.2		\$ 75,661.80
Various Cities		259.8		\$ 26,239.80
Townships / Associations / Local Governments / Other		136.6		\$ 11,036.60
Various Counties Psychopathic Personalities Commitments		16,757.3		\$ 1,438,824.90
Various Counties/Criminal Appeals		10,842.1		\$ 1,089,555.10
<b>SUBTOTAL</b>		<b>37,455.9</b>		<b>\$ 3,311,108.90</b>
<b>TOTAL NON-PARTNER AGENCIES SUBDIVISIONS</b>		<b>133,363.7</b>		<b>\$ 11,938,825.70</b>
<b>TOTAL PARTNER/SEMI-PARTNER AGENCIES (from page A-1)</b>		<b>115,810.6</b>		<b>\$ 10,964,302.60</b>
<b>TOTAL NON-PARTNER AGENCIES SUBDIVISIONS</b>		<b>133,363.7</b>		<b>\$ 11,938,825.70</b>
<b>GRAND TOTAL HOURS/EXPENDITURES (4)</b>		<b>249,174.3</b>		<b>\$ 22,903,128.30</b>
<b>Notes:</b>				
(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 \$101.00 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: SPECIAL ATTORNEY EXPENDITURES  
BOND COUNSEL FOR FY 2007, BY AGENCY**

<b>AGENCY</b>	<b>AMOUNT</b>
Agricultural and Economic Development Board	\$ 1,325.51
Employment and Economic Development	\$ 139,712.47
Finance	\$ 143,181.91
Higher Education Facilities Authority	\$ 245,186.13
Higher Education Services Office	\$ 43,858.69
Housing Finance Agency	\$ 364,500.75
Iron Range Resources	\$ 35,895.42
MnSCU	\$ 2,979.32
Rural Finance Authority	\$ 5,465.79
<b>TOTAL</b>	\$ 982,105.99

**APPENDIX B: SPECIAL ATTORNEY EXPENDITURES  
FOR FY 2007, BY AGENCY**

<b>AGENCY</b>	<b>AMOUNT</b>
Administration	\$ 79,166.27
Attorney General's Office	\$ 34,431.40
Employee Relations	\$ 230,350.68
Finance	\$ 249,973.91
Housing Finance	\$ 8,759.05
Human Services	\$ 46,224.33
Labor and Industry	\$ 63,638.08
Medical Practice Board	\$ 97,920.50
MnSCU	\$ 65,505.99
<b>TOTAL</b>	\$ 875,970.21