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

ANNUAL REPORT REQUIRED BY

Minnesota Statute 8.15, Subdivision 4 (2008)

Fiscal Year 2009

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INTRODUCTION

This report is intended to fulfill the requirements of Minnesota Statutes Section 8.15, Subdivision 4, for Fiscal Year 2009 (FY 09).

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

GOVERNMENT OPERATIONS SECTION

PUBLIC FINANCE DIVISION

The Public Finance Division represents the departments of Administration, Agriculture, Commerce, Employment and Economic Development, Minnesota Management and Budget, 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 09 included:

- Successfully represented the Minnesota Legislature in an appeal filed by private parties from dismissal of their lawsuit challenging per diem living expenses paid to members of the Legislature pursuant to state law.
- Provided advice to State agency 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.
- Assisted DNR with approximately 98 real estate acquisitions totaling over \$18 million and involving approximately 6,521 acres of land and prepared title opinions and drafted deeds with respect to approximately 23 land exchanges. Provided legal services to DNR in negotiations with MPCA, DNR Flint Hills and Department of Interior for a conservation easement over a portion of Flint Hills property. Represented DNR in various district court and Minnesota Court of Appeals cases involving real estate transactions and disputes; condemnation proceedings; responded on behalf of DNR in approximately 100 quiet title actions and land registrations in order to preserve the State's mineral interests and regulatory rights on navigable waters; and in a Quiet Title action to resolve a dispute with the County over the existence of township roads within a wildlife management area. 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. 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.
- Advised and represented the Office of Administrative Hearings in connection with municipal boundary adjustment matters and constitutional challenges to enforcement of the Fair Campaign Practices Act;

- Advised the Department of Administration on various real estate matters, including purchase of a church in St. Paul, mold problems in a state leased building, and the State as a holdover tenant and advised the Plant Management Division, in negotiations with groups who applied for permits to hold demonstrations on the Capitol complex during the Republican National Convention in September 2008.
- Represented the Minnesota Department of Agriculture (“MDA”) in various matters, including food safety violations, a food product recall, pesticide application violations, data practices issues in a challenge to constitutionality of Minnesota Seed Law, and successfully represented MDA and individual defendants in federal district court against § 1983 claims and a challenge to constitutionality of the statute eliminating \$2.2 million in subsidy payments to bankrupt ethanol entities.
- Responded to requests for informal legal guidance from local governments.
- Advised the Board of Animal Health regarding the bovine tuberculosis control program and possible disposition or euthanasia of tens of thousands of turkeys owned by a bankrupt Iowa processor.
- 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;¹ 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 Commerce involving disciplinary action against licensees; obtained over \$585,200 in civil penalties and settlements, including disciplinary actions against mortgage originators; real estate appraisers, real estate salespersons; collections agencies; securities salespersons; insurance salespersons; and notaries public. Provided legal advice to Commerce and drafted pleadings that stipulated to payment of \$59,180 on 5 applications to the Real Estate Education, Research and Recovery Fund, as well as defended the fund against ineligible and/or overstated claims, saving the State from improperly paying \$10,622.
- Assisted Department of Finance (now Minnesota Management and Budget “MMB”) with amendments to the State banking warrant processing, merchant processing, and prepaid debit card agreements; a payroll data security breach; facilitated bond issuance by providing legal

¹ 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.

consultation to State agencies for over \$1.9 billion in general obligation and revenue bonds; advised state agencies regarding projects funded with general obligation bonds including the Rochester Mayo Civic Center; Northern Lights Express; high speed rail; regional rail projects; and local road improvement programs; and represented the Commissioner with respect to five claims made against the Torrens Assurance Fund which provides compensation to those who have suffered a loss or damage due to an error made by the examiner or registrar of titles.

- 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 Department of Human Services in connection with litigation arising from termination of a major software design and development contract.
- Advised Iron Range Resources Agency and Board (“Iron Range Resources”) regarding various economic development loans and equity transactions, including VEC (wind turbine blade facility/Irwin Jacobs), C-BED project (participation with Mt. Iron to install wind turbines), Mesabi Nugget, Franconia Minerals (non-ferrous minerals extraction), Minnesota Steel Industries (integrated steel plant), Magnetation (stockpiled ore processing) and Excelsior Energy; as well as workouts, collections, contracts, data practices requests and trademark registrations; various land sales, acquisitions, development agreements, facility management agreements, mechanic’s lien claim settlement, master association reformation and private sector transition plan, common interest community, title registration, and easement matters at Giants Ridge; employment matters; Motorplex related real estate transactions, title work and easements; business corporation management of Iron Range Ventures and Mesabi Nugget, Inc; advice regarding various taconite production tax assessment and distribution statute enforcement and amendment matters, and bankruptcy claim settlement matters.
- Advised and represented the Department of Labor and Industry (“DLI”), 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. Handled 42 contested cases for DLI against licensed and unlicensed builders and obtained over \$311,000 in civil penalties and settlements. Provided legal advice to DLI, appeared in district court, and/or drafted pleadings that stipulated to payment of more than \$1.7 million to victimized homeowners on over 60 applications to the Contractor’s Recovery Fund,² as well as defended the Contractor’s Fund against ineligible and/or overstated claims, saving the State from improperly paying \$489,079. Defended the DLI in state district court against lawsuit that sought to declare unconstitutional the State Building Code.

² 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.

- Represented the Minnesota Department of Natural Resources (“DNR”) in State district court against takings and trespass claims related to drainage ditch repairs undertaken by a ditch authority/watershed district resulting in the unintentional draining of a public water and its subsequent restoration pursuant to a DNR restoration order and in another action before the Minnesota Court of Appeals in an inverse condemnation action seeking damages of \$900,000 and reconstruction of a dam, preservation of lake level, and involving possible flooding of agricultural land.
- Represented DNR by filing amicus briefs in a federal appellate court challenge brought by environmental groups against the U.S. Forest Service challenging the national forest management plan for Superior National Forest and in the 8th Circuit Court of Appeals supporting the U.S. Forest Service in a challenge to the existing boundaries of the Boundary Waters Canoe Area Wilderness.
- Represented DNR in an action brought in federal court by environmental groups against the U.S. Fish and Wildlife Service challenging the removal of the gray wolf from the federal Endangered Species list and in a legal challenge brought under the federal Endangered Species Act by animal protection groups to DNR’s trapping and snaring regulatory and licensing program; achieving a favorable resolution through summary judgment.
- Advised DNR regarding environmental review issues and represented DNR in district court and the Court of Appeals regarding environmental review for the Minnesota Steel, Inc. project. Provided general advice and district court representation to DNR Enforcement regarding numerous matters, including the Wetlands Conservation Act, vehicle and equipment confiscations, and wild animal pelt 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; drafting of agreements; and issues of tribal sovereignty and state-tribal jurisdiction.
- 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, the issuance of aquatic plant management permits, and restoration of waters and wetlands in the development of shoreland and structures rule amendments.
- Represented DNR Waters Division in two appeals to both the Minnesota Court of Appeals and the Minnesota Supreme Court 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.

- Advised MnSCU regarding implications of injunctions against software users resulting from litigation alleging software patent infringement by a company supplying curriculum management software to the MnSCU institutions; advised MnSCU regarding a variety of real estate financing, construction, contract, intellectual property and licensing matters and drafted licensing and services level agreements for marketing of State-owned software.
- Advised Department of Public Safety regarding drivers license vendor performance and card laminate failure issues and remedies.
- Represented the Department of Public Safety in an action in Ramsey County District Court by six members of the Metro Gang Strike Force who claim that revealing their identities as attendees at a six-day conference in Hawaii violated the Government Data Practices Act.
- Filed eight appeals to the Minnesota Court of Appeals regarding the denial of claims and argued five cases before the Minnesota Court of Appeals on behalf of the Public Safety Officers Benefit Eligibility Panel.
- Advised and represented the Secretary of State in numerous election, corporate, and trade name registration matters, including a statewide primary recount for the Office of Associate Justice of the Supreme Court; a statewide recount for the Office of U.S. Senator; five expedited matters in the Minnesota Supreme Court; a response to a petition for certiorari in the U.S. District Court as well as providing advice and guidance to the Secretary's Office and the courts in connection with the U.S. Senate elections contest at the district and state Supreme Court level. Updated annotations for the Secretary of State's Election Manual.
- Facilitated the filing of claims by the Minnesota State Board of Investment ("MSBI") in securities litigation and advised MSBI in connection with various investment management agreements and alternative investments.
- 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 26 contested matters.
- Represented the Board of Teaching in a mandamus action brought in Ramsey County District Court requiring the Board to extend the amount of time for certain speech language pathologists to meet additional educational requirements.
- Advised the Board of Water and Soil Resources ("BWSR") on real estate issues related to conservation easements, including reviewing approximately 157 Reinvest in Minnesota ("RIM") easement files, and the wetland banking program, Wetland Conservation Act program, its administrative penalty program, rules, and many other matters. Represented BWSR in appeals to the Court of Appeals of a denial of a Wetland Conservation Act exemption and an appeal of the expansion of two watershed districts.

TAX LITIGATION & BANKRUPTCY DIVISION

OVERVIEW

The Tax Litigation & Bankruptcy Division represents the Minnesota Department of Revenue ("Revenue") in taxpayer-initiated court cases appealing Revenue's state tax assessments, seeking refunds, contesting collection actions, or challenging the validity of the State's tax laws. In FY 09, the division opened 107 new Revenue litigation cases. In addition, it handles numerous bankruptcy matters for state agencies other than Revenue. Division attorneys appear in the Minnesota Supreme Court, the Minnesota Court of Appeals, Minnesota Tax Court, state district court, federal district court and the federal appellate court (8th Cir.) and bankruptcy court.

The majority of new cases involve the State's income and sales taxes including personal liability assessments against corporate officers for corporations' unpaid withholding taxes and sales taxes. The most financially significant individual cases are corporate tax refund claims and challenges to Revenue's assessments of corporate tax ranging in amounts up to \$20 Million dollars.

In addition to representing Revenue, the division also represents state agencies in a wide range of bankruptcy matters in bankruptcy court. Many of these large bankruptcy cases involve significant state contracts with vendors or service providers who subsequently declare bankruptcy. The division represents various state agencies filing claims in bankruptcy court to recover state funds and protect the state's priority of claims

SIGNIFICANT RESOLVED TAX LITIGATION & BANKRUPTCY CASES:

- **Sales/Use Tax on Fuel Used in Interstate Railroad.** Assisted in a settlement in federal district court in a suit by a major interstate railroad which challenged the validity of Revenue's assessment of sales and use tax on diesel fuel used by the railroad. The Eighth Circuit ruled in late 2007 that the tax violates federal law with regard to two different interstate railroads. However, the Minnesota Supreme Court ruled in 2000 that this tax does not violate federal law as it relates to this particular railroad. The favorable global settlement with the railroad resolved the declaratory judgment and injunctive action in federal court and also settled all future potential administrative refund claims that the railroad could later assert in state court in the amount of approximately \$20 Million dollars it had paid in sales and use tax on diesel fuel.
- **Sales/Use Tax on Fuel Used by Two Interstate Natural Gas Pipelines.** Obtained a favorable ruling from the Minnesota Supreme Court denying two Pipelines' petitions for review of the Minnesota Court of Appeals ruling for Revenue in a refund claim of approximately \$9 Million dollars by two major interstate natural gas pipelines. The district court ruled that the Pipelines' use of natural gas in its pipelines is subject to Minnesota sales and use tax and that the sales and use tax on the Pipelines use of fuel was constitutional.

- **Sales/Use Tax on Fuel in Interstate Natural Gas Pipeline.** Obtained a favorable voluntary dismissal of a suit in Ramsey District Court by a Pipeline in its refund claim of approximately \$1 Million dollars. The Pipeline had joined in a suit with two (2) other major interstate Pipelines (see above) in a constitutional and statutory challenge to the state sales and use tax.
- **Sales/Use Tax and the Capital Equipment Exemption.** Obtained a favorable ruling from the Minnesota Tax Court against a large corporate laundering service which affirmed Revenue's denial of the corporation's request for a capital equipment refund under the capital equipment exemption to the sales/use tax statute and rejected the corporation's challenge to the sales/use tax statute.
- **Corporate Tax on Intercompany Loans.** Assisted in a settlement in the Minnesota Tax Court against a major interstate railroad appealing Revenue's assessment and subsequent denial of the railroad's request for a refund of approximately \$4.2 Million dollars in corporate franchise tax for multiple tax years.
- **Protection of State's Tax-Forfeited Lands.** Obtained a favorable decision at the Minnesota Court of Appeals upholding the state's right of reversion of tax-forfeited lands when the city or county who received the tax-forfeited lands from the state in the form of use-deeds fails to maintain the land consistent with the terms of the use-deed issued to it by Revenue.
- **Insurance Premiums Tax.** Obtained a favorable decision at the Minnesota Supreme Court affirming the Minnesota Tax Court's order upholding Revenue's determination that insurance premiums tax applies to the total amount paid for a title insurance policy regardless of the amount of premium an agent remits to the insurer.
- **Individual Income Tax.** Obtained a favorable decision at the Eighth Circuit Court of Appeals affirming the Federal Court's dismissal of a taxpayer's challenge to the Minnesota state income tax.
- **Individual Income Tax, Residency for High Income Individuals.** Obtained a favorable decision at the Minnesota Supreme Court affirming the Minnesota Tax Court's upholding of Revenue's assessment against a high income individual who attempted to evade Minnesota state taxes by arguing he was not a resident of Minnesota, but rather a resident of Florida, a state with no state income tax. The Minnesota Supreme Court's decision upheld the statutes and rules governing the determination of residency for purposes of individual income tax assessments.
- **Sales/Use Tax.** Obtained numerous favorable decisions and assisted in settlements in the Minnesota Tax Court of assessment and collection actions against corporations for unpaid sales/use taxes of over \$3 Million dollars.
- **Sales Tax, Officer Liability.** Obtained numerous favorable decisions at the Minnesota Tax Court on motions for summary judgment or after trial affirming Revenue's personal liability

assessment of corporate officers for the payment of a corporation's unpaid sales tax of over \$1 Million dollars.

- **Withholding Tax, Officer Liability.** Obtained numerous favorable decisions at the Minnesota Tax Court on summary judgment or after trial affirming Revenue's personal liability assessment of corporate officers for the payment of a corporation's unpaid withholding tax of approximately over \$1 Million dollars.
- **Tax Protestors:** Obtained several favorable decisions at the Minnesota Supreme Court, federal district court, state district court and the Minnesota 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 or other sham transactions.

SIGNIFICANT PENDING TAX & BANKRUPTCY CASES:

- **State Tobacco Tax.** Defended Revenue in the Minnesota Supreme Court in a suit by a tobacco products distributor who brought constitutional and statutory challenges to Minnesota's tobacco tax. Obtained a favorable ruling at the Minnesota Tax Court which upheld the tax and we are awaiting a decision from the Minnesota Supreme Court.
- **Corporate Tax on Asset Transfers to Related Foreign Corporations.** Defended Revenue in the Minnesota Supreme Court after obtaining a favorable ruling in the Minnesota Tax Court regarding certain foreign operating corporation (FOC) transactions. The case involves a large financial entity appealing Revenue's assessment of corporate franchise tax of approximately \$2.5 Million dollars for transactions between a parent company and its related FOC. The ultimate issue in this case is whether the Minnesota Supreme Court will allow Revenue to disregard, and treat as otherwise taxable, certain FOC transactions whose exclusive purpose was to avoid taxation when the transactions would otherwise be taxable. A related issue before the Court is whether to apply the economic substance and business purpose doctrine to individual FOC transactions. The outcome of this litigation will have significant impact on revenue for the State and the assessment or subsequent claims for refunds of similarly situated corporations.
- **Corporate Tax on Non-Filing S Corporation.** Defended Revenue in the Minnesota Tax Court in an appeal by a large S corporation of Revenue's assessment of over \$3 Million dollars. A corporation that has made an election for a particular year as a S corporation must file an information return with Revenue. Because the earnings of a S corporation flow through to the individuals who own the corporation, the corporation must state in this information return the identity of the shareholders and their respective percentage ownership. This corporation did not comply with these statutory requirements and was subjected to a 10% penalty of the aggregate amount of the items reported.
- **State's Property Tax Valuation Method, Energy Corporation.** Defended Revenue in the Minnesota Tax Court in a suit by a large hydro-electric energy facility which challenges the

constitutionality of various sections of the state commercial property tax valuation methods. This suit involves overlapping questions of county and state interests and jurisdictions.

- **State's Property Tax Valuation Method, Interstate Utility Pipeline.** Defended Revenue in the Minnesota Tax Court in a suit by a large interstate natural gas pipeline company consisting of hundreds of miles of pipeline located through numerous counties in Minnesota. The pipeline company challenges the constitutionality of various portions of the state commercial property tax valuation methods.
- **Sales Tax, Transaction involving Third Party Consideration.** Defended Revenue in the Minnesota Tax Court in a suit by a medical supply corporation. The company challenges Revenue's assessment of sales/use tax on credits the corporation receives from manufacturers of its products which it sells to third parties. The amount of tax is approximately \$1 Million dollars and an adjudication of the issues in this case will affect other similarly situated taxpayers.
- **Individual Income Tax, Taxation of Indians on Reservations.** Defended Revenue in Federal District Court in a declaratory judgment and injunction suit by a tribal member who resides on an Indian reservation in Minnesota but receives income from a pension for work he completed off of the reservation and outside of Minnesota. The taxpayer challenges the state's taxation of the income.
- **Individual Income Tax, Residency of High Income Individual.** Defended Revenue in the Minnesota Tax Court in two suits by two high income individuals who challenge Revenue's determination that they are residents of Minnesota for purposes of the Minnesota state income tax. One of these suits involves an assessment of approximately \$2 Million dollars against an individual who owns and operates several successful businesses in Minnesota but argues he is a resident of Nevada, a state with no state income tax. In one of these cases, the individual challenges the constitutionality of Revenue's application and interpretation of the statutes and promulgated rules that outline the factors to be considered in determining whether an individual is a Minnesota resident for state income tax purposes.
- **Bankruptcy, Fraudulent Chapter 7 Filing of High Income Individual.** Defended Revenue in Bankruptcy Court in an action opposing an individual's fraudulent filing of a Chapter 7 Bankruptcy and the individual's attempt to discharge \$8 Million dollars of combined federal and Minnesota state tax liability. The division attorneys are working closely with U.S. Department of Justice attorneys to file objections to the bankruptcy and to conduct discovery of the individual's numerous and complex financial transactions involving various trusts.
- **Bankruptcy, Chapter 11 Filing of Major Investment Company.** Defended the Minnesota State Board of Investment's interests in a Chapter 11 bankruptcy action by a very large investment company in Bankruptcy Court. The Board had roughly \$55 Million dollars in bonds with the investment company. When the company declared bankruptcy some of the Board's non-bond investments could be recovered under certain provisions of the Bankruptcy Code, but bonds are not afforded those protections.

- **Bankruptcy, Chapter 11 Filing of Major Computer Manufacturer.** Defended multiple Minnesota state agencies in Bankruptcy Court in a major computer manufacturer's Chapter 11 bankruptcy action. Several Minnesota state agencies including numerous MnSCU campuses and the Minnesota Racing Commission contracted with the computer manufacturer for hardware, service and maintenance guarantees.
- **Collection Litigation for State Agencies:** Represented numerous state agencies in seeking collection of funds owed to state agencies, defending or preserving state agencies' rights in contract actions, collecting misappropriated or stolen funds, and defending various claims challenging these collections.
- **Real Estate Matters and Property Liens for the Department:** Reviewed and responded to numerous and varied property liens, lawsuits and filings involving Revenue including, foreclosure actions, quiet title actions, land registration, notices of property sales, etc. in state and federal court and defends or seeks to preserve the priority of state tax liens over the liens and judgments of other claimants.

EDUCATION DIVISION

The Education Division represents the State's complex and varied educational system, handling most student related matters for the Minnesota State Colleges and Universities ("MnSCU") system of 32 separate campuses. Other divisions throughout the Office of the Minnesota Attorney General provide legal services to MnSCU on such issues as employment law and public finance issues. In addition to representing the numerous MnSCU campuses, the Education Division also represents the Minnesota Department of Education, the Office of Higher Education, and the Perpich Center for Arts Education and the State Academies.

MINNESOTA STATE COLLEGES AND UNIVERSITIES ("MnSCU")

The division represents the Chancellor's staff and MnSCU administrators at institutions throughout the state. It represents MnSCU in a variety of formal lawsuits initiated primarily by students and some former staff against the schools. The division provides client advice on a wide range of issues including instituting best practices, student disciplinary proceedings, and various additional constitutional issues that arise in the context of educating, counseling and the housing of students. Examples of the division's work for MnSCU during the last year include:

- **Sexual Harassment by Fellow Students and Faculty Member Failure to Intervene.** Assisted in settling a lawsuit by the lone female student of an all male millwright program for significantly less than the \$1 Million demand.
- **Dismissals and Default Judgments.** Successfully obtained several dismissals and default judgments in State district courts against plaintiffs who sued various MnSCU campuses.

- **U.S. Department of Education, Office for Civil Rights (“OCR”).** Provided legal advice and defended against complaints filed with the OCR, including the dismissal of student claims of alleged discrimination.
- **Minnesota Department of Human Rights (“MDHR”).** In FY 09 there was an increase in students filing MDHR complaints. Obtained several dismissals or findings of no discrimination against various MnSCU campuses.

MINNESOTA DEPARTMENT OF EDUCATION (“MDE”)

The division provides legal advice to MDE, which administers and oversees the State’s K-12 education programs, including charter school issues, state and federal special education programs, 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. The division’s legal work for MDE includes, for example:

- **Affirming the Commissioner of Education’s Quasi-Appellate Jurisdiction over School Board Expulsion Proceedings.** Successfully argued at the Minnesota Court of Appeals that the Commissioner of Education retains the jurisdiction in the appeal of an expulsion to require a school board to provide sufficient written and detailed facts to support its expulsion decision.
- **Special Education.** Successfully defended MDE in numerous lawsuits in Minnesota Federal District Court and in the Eighth Circuit Court of Appeals which challenged MDE’s supervision of local school districts in complying with federal and state special education laws and MDE’s complaint resolution decisions regarding special education services. Filed an amicus (friend of the court) brief in the U.S. Supreme Court in support of a petition for certiorari asking that the Court reverse an Eighth Circuit decision which held that the burden of proof in due process hearings regarding special education cases is with the party requesting the relief and arguing that Minnesota’s statutes expressly assign the burden of proof in due process hearings to the school districts. Successfully defended MDE in case at Minnesota Court of Appeals in which school district challenged MDE’s determination that state and federal special education statutes require school districts to provide access for special education students to extracurricular activities.
- **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 lawsuits in state district court and the Minnesota Court of Appeals arising out of closure of charter schools. Following are some significant cases. The division is defending the Commissioner of Education in Federal District Court in a large lawsuit which contains numerous claims by the American Civil Liberties Union (“ACLU”) against MDE, the Commissioner, the charter school, its sponsor, and its board members among others, arguing in part that the Commissioner and MDE failed to appropriately oversee the administration of a charter school. In essence, the ACLU claims that MDE and the Commissioner impermissibly violated the Establishment Clause of the First Amendment by allowing the charter school to

operate as a religious school and providing state and federal funding to the school. The division successfully brought a Motion to Dismiss to dismiss several claims against the Commissioner and MDE. After the Court's Order, only one claim remains against the Commissioner. The case is proceeding toward discovery.

- **Maltreatment of Minors in Schools.** Successfully represented MDE in several 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 several appeals of MDE's final determination of maltreatment to state district court.

OFFICE OF HIGHER EDUCATION ("OHE")

The division provides to the OHE legal advice and representation on a variety of issues that arise from OHE's administration of 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. During the last year, the division argued successfully at the Office of Administrative Hearings that a particular private educational entity was subject to OHE's registration and licensure statutes. The case is currently before the Minnesota Court of Appeals.

TELECOMMUNICATIONS AND ENERGY DIVISION

The Telecommunications and Energy Division primarily represents the Minnesota Department of Commerce ("Commerce") regarding the agency's telecommunications, energy advocacy, and facilities permitting responsibilities as well as its Weights and Measures Division. Division attorneys represent the Department before the Minnesota Public Utilities Commission, Office of Administrative Hearings, federal agencies, and state and federal courts. In FY 09, the Telecommunications and Energy Division provided legal advice and representation to the Department on many issues such as:

TELECOMMUNICATIONS

- **Local Service Competition - Wholesale Cost/Prices.** Provided litigation assistance involving claims that Qwest overcharged its competitors under state and federal laws which required former Bell operating companies such as Qwest, which own the local telecommunications plant, to lease certain parts of the local phone network (the "271 elements") to competitors at "reasonable" prices, and other parts of the network (the "251 elements" at "cost." The litigated issues concerned the Commission's authority, federal preemption of Minnesota statutes, and interpretation of state and federal law. Other pending dockets involve Qwest's commingling of regulated and non-regulated elements into bundled service packages, and the Commission's authority to price these elements and procedures regarding bundling of elements.

- **Competition - Including Non-price Issues.** Represented Commerce in various contested case proceedings involving allegations that Qwest violated competitive requirements, including alleged overcharging, failing to provide competitors with access to parts of the Qwest network, causing loss of service and interconnectivity, and the improper use of CLECs' customer proprietary information.
- **Competition Reclassification of Qwest's Wire Centers.** Provided litigation assistance regarding Qwest's annual petitions to reclassify wire centers as "unimpaired" under FCC rules, such that Qwest provided unbundled network elements at higher wholesale rates than the cost-based rates required where competition is "impaired."
- **Interconnected Carriers and Directory Listings.** Provided litigation assistance in contested case proceedings where competitors to incumbent carriers (like Qwest) have sought Commission adjudications of disputes about directory listings services.
- **Interconnection of Voice, Data and Internet Networks.** Provided litigation support for a series of complex matters of first impression in Minnesota regarding the interplay of the traditional public telephone network and the internet, and the obligations of incumbent telephone companies to competitors that operate networks in which voice and other audio (and video) traffic is transmitted only on digital networks. Other litigation involved "phantom" traffic to local carriers that masks the identify of the correct carrier to bill for transmission of calls.
- **Price Discrimination and Non-Tariffed Rate Cases.** Represented Commerce in several actions involving authority of the Commission to enforce Minnesota's statutory prohibitions on illegal price discrimination among competitors. For example, the Commission determined that AT&T intentionally violated State statutes and rules and concealed its actions from the public and regulators when it entered into discriminatory arrangements that gave AT&T and its "preferred" competitors dramatically lower prices for "access" to in-state long-distance calls. This matter was appealed to the Minnesota Court of Appeals.
- **Arbitration of Interconnection Agreements.** Represented Commerce in several contested case proceedings that concerned disputed interconnection agreements between incumbent carriers (like Qwest), and their competitors.
- **Disconnection of Competitors.** Assisted Commerce on several matters involving Qwest's efforts to disconnect competing telecommunications carriers for alleged nonpayment of charges, and the companies' responsive claims of Qwest misconduct.
- **Investigation of Industry-Wide Promotional Practices.** Represented Commerce in litigation concerning the Commission's effort to address discriminatory practices of certain telecommunications service providers that in promotional practices, attempted to circumvent federal prohibitions against unreasonable price discrimination. Several individual dockets were heard by the Commission, and a generic State-wide investigation into promotional practices that undercut competition in the state resale markets is pending.

- **Alternative Form of Regulation (“AFOR”) Petitions.** Appeared for Commerce in litigation involving challenges by Qwest of Commission authority based on Qwest’s claims that its AFOR plan preempts Minnesota laws that prohibit anti-competitive and discriminatory conduct.
- **Exorbitant Switched Access Fees and Traffic Pumping Complaints.** In several dockets, intrastate long distance carriers, such as Verizon, filed complaints requesting that the Commission order local service providers to reduce their access charges to reasonable levels. For example, a pending matter concerns allegations that one local carrier is selling incoming telephone services for the purpose of collecting exorbitant access fees from long distance companies.

ENERGY

- **Merger/Acquisitions.** Provided legal advice regarding accounting-type compliance issues in the merger of two natural gas utilities.
- **Asset Sales: Transmission Lines.** Assisted Commerce with legal issues regarding the Commission’s approval, in a case of first impression, of a state-regulated utility’s sale of its transmission lines to a non-state regulated entity.
- **General Rate Increase Requests.** Provided litigation support and post-trial legal briefing of general rate increase requests of three regulated utilities, and provided preliminary legal advice regarding the March 2009 rate increase filing of an electric cooperative. Assisted Commerce with post-trial proceedings and compliance issues concerning the Commission’s recent rate-setting decision regarding an electric utility.
- **Certificate of Need and Route Permitting for Electric Transmission Line Construction.** Provided litigation support and legal advice concerning several need and route permit requests for high voltage transmission lines. For example, provided trial support and post-hearing briefing in the first phase of the massive CapX high voltage transmission project need request of Xcel Energy and Great River Energy. Provided preliminary legal advice regarding the second phase of CapX, a request to build a high voltage project from Bemidji to Grand Rapids, Minnesota.
- **Electric Transmission Lines Operation/Control.** Provided advice regarding the interpretation of federal and State enforcement jurisdiction for the regional Midwest Independent System Operator.
- **Certificate of Need for New Construction of Electric Generating Plants.** Provided legal advice on several wind turbine generation plant requests. Although most wind projects do not involve contested need proceedings, such projects do require legal assistance for site and route permitting issues.
- **Coal Gasification Electric Generating Plant.** Provided litigation support, advice and representation before the Commission regarding the first phase of a proposed power purchase agreement of Excelsior Energy, an independent power producer, that would require Xcel

Energy's ratepayers to pay for electricity generated by Excelsior's proposed coal gasification power plant.

- **Certificates of Need and Route Permitting for Underground Pipeline Construction.** Appeal on environmental grounds is pending as to Commission's May 2008 approval of phase one ("Southern Lights Project") involving a proposed 108 mile crude oil pipeline by Enbridge Energy from Minnesota's North Dakota border to Clearbrook, Minnesota, which is the location of the Enbridge existing tank farm and terminal facility. Provided advice regarding compliance issues related to on-going construction, and preliminary assistance with routing issues as to the second phase of this project, which is 325 miles of new pipe from Alberta, Canada, across Minnesota to Superior, Wisconsin (the "Alberta Clipper Project"), and 175 miles in Minnesota of new pipe from Superior, Wisconsin to Clearbrook, Minnesota (the "Southern Lights Diluent Project"). Advised as to compliance matters involving the approximately 319 miles of Minnesota Pipeline Company's (MinnCan) crude oil pipeline approved by the Commission in 2007, that will deliver crude oil to the Flint Hills refinery in Rosemount, Minnesota.
- **Routing and Siting Matters.** Provided legal assistance to the Energy Facility Permitting staff as to transmission line, pipeline and plant siting and routing matters that do not also require a certificate of need from the Commission.
- **Decoupling of Utility Revenue from Energy Sales.** Provided legal assistance to Commerce with respect to the agency's recommendation to the Commission as to partial decoupling criteria for natural gas and electric utilities. Providing trial assistance regarding this issue, that is included in the on-going contested case proceeding in the CenterPoint rate case.
- **Automatic Pass-through Charges.** Provided legal assistance concerning public utilities' automatic adjustment filings regarding energy costs which result in automatic rate changes for retail customers. For example, provided legal assistance regarding CenterPoint Energy's petition for a variance to be allowed to retroactively collect from ratepayers over \$20 million that CenterPoint failed to collect due to a repeated accounting error beginning in 2000. The Minnesota Court of Appeals reversed the Commission's ruling against CenterPoint's position, and the matter proceeded to the Minnesota Supreme Court.
- **Certificate of Need for Nuclear Generation Capacity and Dry Cask Storage.** Provided litigation support and post-trial briefing concerning Xcel Energy's need and site permitting requests to upgrade its nuclear generating capacity, at its Monticello and Prairie Island generating facilities, and the utility's need request to expand its dry cask spent fuel storage facility at Prairie Island. The Monticello proceedings were approved by the Commission while the Prairie Island requests are pending, following a joint trial before the Office of Administrative Hearings in June, 2009.
- **Conservation Improvement Plan ("CIP"), Renewable Energy, and Disbursed Renewable Generation Matters.** Provided legal assistance regarding statutorily required utility conservation spending and renewable energy standards and credits.

- **Utility Line Crossing of Railroad Property Matters.** Provided assistance to Commerce in its role under state law as a mediator of valuation disputes between regulated utilities and railroads when utility lines and pipes cross railroad tracks.

TRANSPORTATION DIVISION

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

The Transportation Division advises Mn/DOT 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 the State against entities that perform defective work, fail to pay employees legally mandated wages, or otherwise fail to comply with contract requirements.

The division represents 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 and evaluates and attempts to resolve claims before litigation arises.

In FY 09 the division's activities included:

- Represented MnDOT in litigation challenging the contract for construction of the I-35W replacement bridge.
- Represented MnDOT in litigation related to eminent domain actions and appeals arising in connection with hundreds of properties are acquired for roadways and other transportation projects in legal actions. The division also defends Mn/DOT against claims that its projects have resulted in inverse takings and provides legal assistance in voluntary sales of real estate for transportation projects.
- Represented Mn/DOT in its statutory prevailing wage enforcement responsibilities recovering unpaid wages for contractors' employees on MnDOT projects;
- Advised the Commissioner in adjudicating contested case decisions in regulatory matters such as prevailing wages, and local road improvement projects.
- Advised Mn/DOT 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 and advised MnDOT, the Minnesota State College and University Board in construction contractor claims.

SOLICITOR GENERAL SECTION

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 validity of statutory prohibition against knowingly false campaign material;
- the validity of legislation prohibiting the making of knowingly false reports of police misconduct;
- the validity of statutes giving the State Public Defender's Office discretion whether to represent misdemeanor post-conviction petitioners;
- the validity of provisions of the Minnesota Code of Judicial Conduct prohibiting judicial candidates and judges from endorsing other candidates and from personally soliciting campaign contributions;
- the system and procedures for bail bond forfeitures;
- state laws subjected to claims of federal preemption; and
- the expungement of fraudulent UCC filings made against government officials

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"), Fair 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 FY 09, the division has saved the State in excess of \$2.6 million dollars 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 occurring in the institutions they operate; and claims against the Department of Natural Resources arising from snowmobile and ATV accidents on state trails. During FY 09 the division saved the State more than \$2.6 million in its resolution of personal injury litigation.

The division represents the State in litigation arising from the I-35W bridge collapse.

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 matters related to the authorization of new electric transmission facilities and gas pipelines, discrimination in the provision of switched access telecommunications service, electric and gas costs to be recovered via automatic adjustment provisions authorized by statute, and approval of a power plant mercury reduction plan. The division also represented the PUC as an *amicus curiae* in a matter involving the application of the filed rate doctrine.

In federal court, the division prevailed in the PUC's 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.

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

Charitable organizations and professional fund-raisers must register and file regular reports with the Attorney General's Office. In the last fiscal year, about \$500,000 in registration fees were remitted to the general fund through the Charities Division. At the end of the fiscal year, the Charities Division had registered and is maintaining public files for over 8,100 charitable (soliciting) organizations, over 2,800 charitable trusts, and over 350 professional fund-raisers. The information from these files is made available to the public in a public file room in the Charities Division and in summary form on the Charities Division section of the Attorney General's website.

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 Charities 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.

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, the Charities Division spoke at various Continuing Legal Education seminars and other classes. In addition, the Charities Division met with several "troubled" boards to provide information to them and explain the requirements of Minnesota law.

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:

- **Safety Services/Community Safety.** Entered into an Assurance with Safety Services and Community Support, a professional fund-raiser that solicits on behalf of badge groups wherein these companies agreed to cease their unlawful telephone solicitation practices, implement policies and practices, make disclosures required under Minnesota law to insure future compliance, and pay \$20,000 in civil penalties.
- **APOGEE Retail, LLC.** Entered into an Assurance with APOGEE, Retail, LLC, which solicits on behalf of the Lupus Foundation, wherein APOGEE agreed to cease its unlawful practices, implement policies and practices to insure compliance, and pay \$30,000 in civil penalties.
- **Community Support, Inc.** Joined a multi-state action against Community Support, Inc., for violations of laws regarding professional fund-raisers, including failing to identify itself as a professional fund-raiser and misleading donors into believing that the callers were from the charities on whose behalf they are calling. Community Support, Inc. entered into an agreement prohibiting it from making misrepresentations about the amount of the donation the charity will retain, the charity's affiliation with a particular police, fire or other public safety organization, or the use of the donation and was required to pay \$200,000 in civil penalties to the states involved in the multi-state action.
- **Twin City Events and North Star Events.** Entered into an Assurance with Twin City Events ("TCE"), a for-profit professional fund-raiser that conducted in-person sales of toys, t-shirts and other novelty merchandise outside retail locations throughout the Twin Cities metro area with the representation that a certain percentage of the sale price would benefit a charitable organization, such as D.A.R.E. America or Marine Toys for Tots. TCE paid \$25,000 in civil penalties, is required to comply with professional fund-raiser registration requirements, and enjoined from using false, deceptive or misleading sales tactics, comply with several ongoing reporting requirements and set up certain policies and procedures to ensure its employees' compliance with the law. This Office also entered into an Assurance with North Star Events ("NSE") a for-profit professional fund-raiser affiliated with TCE, which conducted in-person sales of toys, t-shirts and other novelty merchandise outside retail locations throughout the Twin Cities metro area with the representation that a certain percentage of the sale price will benefit a charitable organization, including D.A.R.E. America, Big Brothers Big Sisters of the Greater Twin Cities and Operation Smile, Inc. NSE paid \$5,000 in civil penalties and agreed to permanently cease all operations in Minnesota.

- **Registration Issues.** As part of the charitable solicitation registration enforcement, the Charities Division worked with charities to correct past deficiencies to allow such charities to come into compliance with Minnesota's charitable registration requirements and insure future compliance.

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 355 such notices in the last fiscal year. The Charities 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. For example:

- **Estate of Linsmayer.** Mr. Linsmayer's will devised his "residence" in Itasca County to realtives, make multiple specific bequests and directed that the remainder of the trust shall constitute a foundation to be administered for religious, charitable, scientific and educational purposes. The personal representative of Linsmayer's estate petitioned the court for instructions. The bequest of the Itasca property, valued at more than \$2 million and comprised of nine separate parcels of land, was in dispute as to whether Mr. Linsmayer intended to devise all nine parcels or just the one upon which the home was located. Because the Foundation was not yet formed, this Office represented the charitable interests in this matter and ultimately reached a settlement under which the Foundation received three parcels with a total value of approximately \$401,000.
- **Estate of Gray.** The estate determined that one of the charitable beneficiaries, an abbey in Texas, no longer existed and petitioned the court for an order determining that the gift to the abbey should lapse and the disclaimed amount should be distributed between the seven remaining charities. This Office provided the Ramsey Count District Court with Minnesota law indicating that decedent's bequest to the abbey should not lapse. The Texas Attorney General office submitted a letter that it should go to a high school related to the abbey. The Court issued an order in which it determined that a Texas high school related to the abbey should receive the abbey's share of the estate.

The Charities Division also receives notice of the dissolution, merger, consolidation or transfer of all or substantially all assets of Minnesota charitable nonprofit corporations. These notices are reviewed to ensure that the assets are protected during such process and used for the purposes for which they were solicited and held.

CIVIL REGULATION SECTION

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

Once MPCA decides on a course of action, EPD attorneys represent MPCA. Most enforcement 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 division assists MPCA in negotiating stipulation agreements with the regulated parties. These agreements generally establish a schedule for taking corrective actions or coming into compliance, payment of a civil penalty, and the implementation of supplemental environmental improvement projects. Some enforcement actions also include cost recovery to recover monetary expenditures made by the State to mitigate or remediate environmental damage. In situations where settlement is not reached, the enforcement matter is litigated in district court on behalf of MPCA by EPD attorneys.

In FY 09, MPCA enforcement actions resulted in approximately 200 APOs and 65 stipulation agreements. The civil penalties imposed totaled approximately \$2.1 Million. Enforcement matters handled by EPD attorneys during FY 09 included the following:

- Assisted MPCA in negotiating a stipulation agreement with Pan-O-Gold Bakery for constructing and operating a "major air emission source" without an MPCA issued permit for the past twenty-four years. The company agreed to pay a civil penalty of \$50,000, donate \$176,500.00 to a nonprofit for retrofitting school buses with pollution control equipment, and install pollution control equipment at a cost of approximately \$1.2 Million.
- Assisted MPCA in negotiating a stipulation agreement with United Taconite for violating water quality and air permit violations. The company agreed to pay a civil penalty of \$125,000.
- Assisted MPCA in negotiating a stipulation agreement with United States Steel (Minntac), to resolve noncompliance with federal preconstruction permitting program. Minntac agreed to implement emission reductions and to pay a civil penalty of \$119,000.

CLIENT REPRESENTATION

The EPD assisted in recovering over \$16 million from insurers and netting \$10 million to recover landfill cleanup costs under the Landfill Cleanup Act. There are presently two active lawsuits filed by the state to recover landfill cleanup costs from insurers. These are the fifth and sixth such lawsuits.

EPD provides legal assistance 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 MPCA seeks legal advice involving permitting, rulemaking, and environmental review. In FY 09 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 U.S. District Court. Examples include successfully defending the MPCA against a challenge to the issuance of the Alexandria Lake Area Sanitary District's wastewater treatment facility permit in a matter before the Minnesota Supreme Court. Also, the division was successful in upholding the newly issued permits for ballast water discharge into Lake Superior before the Minnesota Court of Appeals and in obtaining Court of Appeals affirmation of the MPCA's new phosphorous rule.

The EPD is representing the MPCA in the thirty year old Reserve Mining (now Northshore Mining) litigation. The EPD presented arguments to the Eighth Circuit Court of Appeals in a case challenging the validity of the "control city standard" and the state's permit conditions controlling discharge of asbestos-like fibers at the company's Silver Bay facility. The Court upheld the State's position in this case.

The EPD is representing the MPCA in matters involving Excel Dairy. The MPCA seeks the Dairy's compliance with the state's hydrogen sulfide standard. EPD is representing the MPCA at the Minnesota Court of Appeals in the Dairy's challenge to the agency's newly issued permit which places tighter limits on the Dairy. The EPD is also representing the agency in a district court enforcement action filed jointly with the Attorney General in Marshall County District Court.

The EPD provided legal services to the MPCA regarding remediation, and natural resource damage and property transfer issues at the Twin Cities Army Arsenal Property (TCAAP) site in Arden Hills. This site is approximately 2,000 acres. The EPD is negotiating with the Department of Justice, the United States Army, and the United States General Service Administration regarding groundwater issues at this site.

The EPD provided legal services to the MPCA on a variety of real estate and contract matters in FY 09, 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 provides legal services 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 09 the EPD provided a variety of general legal services to OEA, including loan document preparation, contract review and grant terms review.

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 09 EQB continued to oversee the environmental review process as carried out by local and state governmental units under the Minnesota Environmental Policy Act. Additionally, EQB revised rules governing the environmental review process with the legal assistance of the AGO.

HEALTH LICENSING INVESTIGATIONS DIVISION

The Health Licensing Investigations Division performs investigative services on behalf of 16 health licensing and two non-health licensing boards. The division works in conjunction with the Health Licensing Division. Division investigations on behalf of the health licensing boards provides separation of the investigative function from the boards' judicial responsibilities.

Complaints referred for investigation are first reviewed to determine whether jurisdiction exists. Allegations in the complaints are often numerous and complex. After the complaint is reviewed, a case strategy is developed before beginning the investigation. This ensures a coordinated and focused approach until completion of the case. Division staff investigate allegations of sexual misconduct or impairment due to drug or alcohol use, review allegations involving individual competency and quality of medical care, review allegations of billing fraud and inspect practice settings for infection control issues. Investigations involving allegations which, if substantiated, present immediate danger to the public or the subject of the investigation are handled on an expedited basis. Examples include an investigation on behalf of the Board of Medical Practice involving allegations of a physician engaging in "bizarre behavior," which resulted in suspension of the doctor's license. An investigation of a nurse accused of sexual misconduct in a hospital setting resulted in the immediate suspension of the nurse's license.

During FY 08/09, division investigators completed over 412 investigations.

HEALTH LICENSING DIVISION

The Health Licensing Division represents the State's health licensing boards, the Health Professionals Services Program, the Minnesota Board of Law Examiners, and the Minnesota Continuing Legal Education Board. During FY 09, the division provided legal representation to all 16 of the State's health licensing boards, which are the Board of Behavioral Health and Therapy, Board of Chiropractic Examiners, Board of Dentistry, Board of Dietetics and Nutrition, Emergency Medical Services Regulatory Board, Board of Marriage and Family Therapy, Board of Medical Practice, Board of Nursing, Board of Nursing Home Administrators, Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Podiatry, Board of Psychology, Board of Social Work, and Board of Veterinary Medicine. Legal representation includes representation at disciplinary conferences, advising attorney services, and representation in contested cases and judicial proceedings. The Health Licensing Division and Health Licensing Investigations Division are jointly assisting the boards with more than 500 cases as of June 30, 2009. The division also serves as general counsel to the boards, which involves providing legal advice on license application matters, data practices questions, and open meeting law issues.

HEALTH RELATED LICENSING BOARDS

Legal services primarily consist of participation in complaint resolution, a process that involves activities devoted to protecting the public. By statute, the Attorney General's Office plays a role in the complaint resolution process. The division advises the boards on procedural due process, statutory interpretation of disciplinary provisions, subpoena power, jurisdiction, peer review, and agency authority. The division is responsible for reviewing investigative reports, advising complaint committees, representing the boards at disciplinary conferences, negotiating settlements, and representing the boards in contested cases.

During FY 09, the boards used negotiation and mediation extensively to resolve complaints. The division negotiated suspension agreements and agreements requiring licensed health care providers to attend training sessions to improve substandard skills, to limit their professional practice to appropriate settings, and refrain from unethical and unprofessional conduct. In one case, the division helped the Board of Dentistry settle a contested case on the first day of a week-long hearing. The settlement required monitoring of the dentist's practice and partial reimbursement of the Board's litigation costs. In FY 09, the division assisted with more than 250 disciplinary and nondisciplinary agreements for the Board of Nursing.

The division's work supports a wide range of resolutions, from initial licensure to revocation to reinstatement. For example, the division assisted the Board of Medical Practice with surrendering a physician's license based on admitted sexual misconduct. During the same period, the division assisted the Board in reinstating the license of a physician who had a history of chemical dependency but demonstrated years of uninterrupted recovery.

During FY 09, the division represented boards in administrative contested case proceedings involving professional misconduct, unlawful practice, and mental health/chemical dependency. The division represented the Board of Dentistry in a five-day contested case

proceeding involving substandard care, infection control, and inappropriate administration of conscious sedation. The division represented the Board of Chiropractic Examiners in a week-long contested case involving a practitioner who administered acupuncture services for 16 years without being registered to do so. The division also represented the Board of Nursing in a contested case involving a nurse who had been discharged from the Health Professionals Services Program because her continued practice would create a risk of harm to the public.

In addition to contested cases before the Office of Administrative Hearings, the division represents the boards' complaint committees directly before the boards in matters involving noncompliance with disciplinary orders, orders for mental and physical examinations, and temporary suspensions. For example, the division represented the Board of Nursing in a petition to temporarily suspend a nurse's license based on his admission that he participated in online suicide chat rooms and influenced individuals to commit suicide.

During FY 09, the division represented the boards in multiple actions in district court and in cases before the Minnesota appellate courts. In one case, the division successfully defended the Board of Chiropractic Examiners' suspension of a chiropractor's license before the Court of Appeals.

BOARD OF LAW EXAMINERS

The division regularly defends the Board of Law Examiners in appeals from applicants who do not obtain a passing score on the Minnesota Bar Examination. The division also evaluated and advised the Board on a challenge to Minnesota's requirement that applicants who wish to take the bar examination must first graduate from an ABA-accredited school.

HEALTH PROFESSIONALS SERVICES PROGRAM

The division assists the Health Professionals Services Program, which is the health boards' diversion program for health care providers who have been diagnosed with mental illness or chemical dependency, in establishing practice restrictions and setting boundaries for impaired physicians, nurses, pharmacists, dentists, and other health care practitioners.

HUMAN RIGHTS/HEALTH/LABOR/CORRECTIONS DIVISION

The Human Rights/Health/Labor/Corrections Division represents the Departments of Human Rights, Labor and Industry, Employment and Economic Security, Corrections, and Veterans Affairs as well as the Bureau of Mediation Services and the Client Security Board.

DEPARTMENT OF HUMAN RIGHTS

The division's major human rights activity is the handling of cases forwarded by the Department of Human Rights following a determination that there is probable cause to believe that 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 more than 80 cases in FY 09. The division's enforcement efforts resulted in Minnesota and its citizens receiving compensatory and injunctive relief for illegal discriminatory treatment. In FY 09, the division assisted the Department in obtaining compensatory relief for Minnesota citizens totaling over \$350,000. On behalf of the Commissioner of the Minnesota Department of Human Rights (MDHR), the division filed briefs as amicus curiae in the Minnesota Supreme Court and Minnesota Court of Appeals. The division, on behalf of the MDHR, addressed the standard of proof for reprisal claims under the Minnesota Human Rights Act (MHRA). The court of appeals then clarified that individuals who are retaliated against for opposing a perceived discriminatory practice may bring a claim under the MHRA without proving that discrimination actually occurred, as long as the individual stated good faith opposition.

MINNESOTA CLIENT SECURITY BOARD

The division brought collection actions on behalf of the Minnesota Client Security Board to collect and preserve debt obligations of more than \$550,000 to the Client Security Fund. The Fund reimburses clients who suffer economic loss because of the dishonest conduct of their attorneys.

HEALTH

HEALTH DEPARTMENT MATTERS

The Health Division provides legal advice to the Minnesota Department of Health ("Health") concerning its regulatory responsibilities and represents Health in all litigation and administrative enforcement actions. Health 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 Health about legal issues concerning contracts, leases and other transactions. Specific examples of the division's work in FY 09 include the following:

- **Health Threat Enforcement.** Advised Health in several matters involving people who were carriers of infectious diseases, such as tuberculosis and HIV. In one of those cases involving an HIV carrier, Health obtained a court order directing a non-compliant HIV carrier to obtain counseling on how to avoid transmitting the HIV disease to others. In two other cases, non-compliant TB carriers agreed to undergo treatment for their TB without the necessity of court action.
- **Home Care Agency Licensing.** Represented Health in an administrative proceeding arising out of inspections of a home care agency from November 2005 to June 2008, which resulted in the discovery of numerous violations and failures to correct those violations and Health's assessment of over \$30,000 in fines against the company. Health proposed to refuse to renew the home care agency's license. The home care agency appealed the licensing action and also appealed a \$12,800 portion of the fines. Following

a contested case hearing, the administrative law judge recommended affirming the \$12,800 in fines and also recommended that the home care license not be renewed. The Commissioner of Health issued an order adopting the recommendation.

- **Home Care Agency Licensing.** Represented Health in an administrative proceeding arising out of inspections of a home care agency in August 2007 resulting in the discovery of numerous conditions that posed a risk of immediate harm to clients. Health suspended the agency's license and then issued a notice of intent to revoke the license. The home care agency appealed. Following a contested case hearing, the administrative law judge recommended that the home care license be revoked. The Commissioner issued an order adopting the recommendation.
- **Enforcing the Food and Beverage Service Licensing Laws.** Represented Health in an administrative proceeding arising after an unlicensed individual provided catering services to a baseball tournament banquet, approximately 100 people became ill. After an investigation, Health determined the bacteria that caused the illnesses most likely proliferated in the *au jus* sauce as the result of improper food handling procedures by the unlicensed caterer. Health issued to the caterer an administrative penalty order ("APO") assessing a \$10,000 penalty. Following a contested case hearing, the administrative law judge recommended affirming the APO, and the Commissioner issued an order adopting the recommendation.
- **Protecting the Public from Asbestos Contamination.** Represented Health in court proceeding, arising when an asbestos contractor's license and certification to perform asbestos-related work was revoked for numerous violations. Following the revocations, the individual continued to work for an asbestos abatement company and to solicit asbestos abatement projects. A district court judge subsequently issued an order permanently enjoining the individual from asbestos-related work or representing to consumers that he is licensed or certified to perform asbestos-related work. Health received notice the individual had removed a boiler containing asbestos at a residence in Minneapolis and had removed asbestos-containing insulation from furnace piping in St. Paul. Represented Health in an order to show cause for contempt hearing. The judge issued an order that the individual had committed contempt and he was ordered to pay a \$250 civil fine and \$1,000 in attorneys' fees.
- **Protecting the Public from Asbestos Contamination.** Represented Health in connection with license revocation action against an asbestos contractor for failing to comply with statutes and regulations governing asbestos abatement and asbestos contractor, which has been the subject of prior orders, entered into a stipulation and consent order, in which the contractor agreed to pay \$5,000 in civil penalties and agreed that any future serious violations would result in another \$5,000 civil penalty and the revocation of the contractor's license. A subsequent Health inspection revealed numerous serious violations of the Asbestos Abatement Act.
- **HMO Enforcement.** Represented Health in administrative action arising after an audit of an HMO revealed that the HMO, when conducting utilization reviews, was not having

a specialist with the same specialty review the requests for treatment in the cases where it denied coverage. The HMO agreed to pay a \$1,500 penalty, and to use a physician reviewer with the appropriate training and specialty to review requests for that type of coverage in the future.

- **Enforcing the Well Driller Licensing Laws.** Obtained injunctive relief against an individual performing well drilling in rural Minnesota without a license.
- **Nursing Home Receivership.** Filed documents in Ramsey County District Court to establish an emergency receivership for the two nursing homes where were in dire financial straits and all of the members of the board of directors resigned. Thereafter, the nursing homes were operated by the Commissioner through a managing agent.

A significant amount of the division's work in FY 09 involved defending Health's determinations that individuals or health care facilities violated the Vulnerable Adults Act by neglecting, abusing or financially exploiting vulnerable adults. Defended Health's 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 nursing home hired a 16-year-old aide to care for residents of the nursing home, and failed to properly train him on how to use an adjustable lift chair when caring for a resident. The resident needed two people to transfer her out of the chair. No one came to assist the 16-year-old aide with the transfer when he asked for assistance, so he left the resident unattended in the chair while he went to get another aide to assist in the transfer. While he was out of the room, the resident fell and broke her leg. She died from complications after surgery on her leg. Following a hearing, the Human Services Judge recommended upholding the finding of neglect against the facility for a lack of policy on how to use the assistive device, as well as a lack of training on use of the lift chair as an assistive device. The Commissioner issued an order affirming the finding of neglect.
- **Nursing Home Neglect.** A nursing assistant was found responsible for neglecting a nursing home resident because she was alone with the resident in the resident's room shortly before the resident was found with a head injury and a hip fracture. After a hearing, the Commissioner upheld the Department's finding of neglect.
- **Nursing Home Abuse and Neglect.** A nursing assistant abused a nursing home resident by grabbing and pulling the resident's shoulder. The nursing assistant also neglected the resident by leaving her lying in bed with a soiled brief for hours. After a hearing, the Commissioner upheld the Department's finding of abuse and neglect.
- **Nursing Home Abuse.** A nursing assistant at a nursing home verbally and emotionally abused five vulnerable adult residents. Despite being asked to stop, she repetitively used derogatory and foul language towards residents at the facility. Following a fair hearing

before a Human Services Judge, the Commissioner issued an order upholding the maltreatment determination.

- **Assisted Living Financial Exploitation.** A home health aide financially exploited two patients by repeatedly using the patients' telephones to make calls to Nigeria totaling over \$1,000 in telephone fees. Following a fair hearing, a Human Services Judge recommended affirming the Department's finding of financial exploitation for one of the two vulnerable adults. After a division attorney filed exceptions, the Commissioner issued an order to affirm recurring financial exploitation maltreatment findings, disqualification, and refusal to set aside the disqualification.
- **Disqualification Appeal.** A county social services agency substantiated that a nursing assistant scratched her son's face, causing marks, and also hit and kicked her daughter. In addition to physical abuse, the nursing assistant was found to have neglected her children by exposing them to her use of crack cocaine. The Department refused her request to set-aside her disqualification so that she could obtain employment at a long-term facility. The nursing assistant appealed, arguing the Department should set aside her disqualification because she does not pose a risk of harm to vulnerable adult residents. After a fair hearing, a Human Services Judge recommended the Commissioner reverse the disqualification and the determination not to set-aside the disqualification. A division attorney submitted Department exceptions, and the Commissioner ultimately affirmed the Department's disqualification and refusal to set aside the disqualification.
- **Disqualification Appeal.** The Department of Human Services permanently disqualified a nursing assistant based on information obtained from law enforcement that he had committed an act that meets the definition of a felony second degree assault. Specifically, the evidence reflects that when he was attempting to purchase a rock of crack cocaine, the victim refused to give him the crack cocaine or return his money, so he slashed the victim's throat with a knife. The nursing assistant appealed the Department's determination of a preponderance of evidence that he committed felony second degree assault. After a fair hearing before a Human Services Judge, the Commissioner issued an order to affirm the permanent disqualification.
- **Disqualification Appeal.** A county social agency substantiated that a nursing assistant maltreated a minor by repeatedly and seriously physically abusing her son while disciplining him over a four-year period. She admitted hitting her son with a hanger and a belt, causing marks on his back. The nursing assistant appealed the decision of the Department to deny her request for a set aside of her disqualification. Following a fair hearing, the Commissioner issued an order to affirm the Department's refusal to set aside the nursing assistant's disqualification.
- **Disqualification Appeal.** The Department of Human Services disqualified a nursing assistant for seven years based on a Hennepin County finding that she had physically abused her child by repeatedly hitting him with a belt and causing injuries. The Department of Health denied the nursing assistant's request for reconsideration. The

nursing assistant appealed. The Commissioner upheld the Department's refusal to rescind or set aside the disqualification.

- **Disqualification Appeal.** The Department of Human Services disqualified a nursing assistant for seven years based on a county finding that she had financially exploited a vulnerable adult. The Department of Health denied the nursing assistant's request for reconsideration. The nursing assistant appealed. The Commissioner upheld the Department's refusal to rescind or set aside the disqualification.

DEPARTMENT OF LABOR AND INDUSTRY

Advice and representation to the Minnesota Department of Labor and Industry (DLI) has also been a key function of the division's work. In representing DLI, the division engages in litigation to enforce occupational safety and health standards, including cases regarding workplace fatalities. In FY 09, the office assisted in resolving approximately 25 OSHA cases and obtaining over \$190,000 in OSHA fines. The division also engages in litigation to enforce Minnesota labor laws, such as the Fair Labor Standards Act, including minimum wage and child labor laws. In addition to fines, the division's litigation and negotiation results in improvements to workplace conditions for Minnesotans.

DEPARTMENT OF CORRECTIONS

The division provides a broad range of legal services to the Department of Corrections and state correctional facilities. These legal services include litigation. The division successfully defended a high volume of lawsuits brought by inmates against the Department. In FY 09, the division defended over 90 lawsuits brought by inmates. In one instance, the division successfully defended a prison guard in a federal jury trial. The inmate alleged that he was assaulted by another inmate because a guard at Stillwater prison had labeled him a "snitch." After a three day trial, a jury found in favor of the guard.

DEPARTMENT OF EMPLOYMENT AND ECONOMIC SECURITY

The division provided advice and representation to the Minnesota Department of Employment and Economic Development (DEED), and participated in bankruptcy proceedings in order to protect the State's interest in collecting reemployment benefits overpayments. In FY 09, cases brought by this Office prevented the discharge in bankruptcy of approximately \$150,000 of improperly received benefits.

HUMAN SERVICES DIVISION

The Human Services Division provides litigation services and legal counsel to the Minnesota Department of Human Services ("DHS"), one of the state's largest agencies. Division attorneys provide legal services to DHS in the four broad areas of Health Care, Children and Family Services, Mental Health, and Licensing.

HEALTH CARE

Division attorneys in the health care area handle legal matters concerning Minnesota Health Care Programs ("MHCP"), continuing and long-term care, health care compliance, and benefit recovery. MHCP includes medical assistance, MinnesotaCare, and General Assistance Medical Care, which together cover approximately 666,000 Minnesotans. In continuing care, division attorneys represent DHS 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. Division attorneys also represent the state in funding disputes between the state and the federal Department of Health and Human Services.

CHILDREN AND FAMILY SERVICES

Division attorneys in the children and family services area handle legal issues relating to public assistance programs, child support, and children protection matters. Public assistance programs include the Minnesota Family Investment Program, the General Assistance program, the Minnesota Supplemental Aid program, and the Food Stamp program. Division attorneys represent DHS in litigation contesting the operation of these programs and advise DHS on the legal issues raised by these programs. 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' 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, children's and adolescent behavioral health centers, the Minnesota Security Hospital ("MSH"), and the Minnesota Sex Offender Program ("MSOP"). Mental Health Team attorneys represent DHS's interests in a broad spectrum of litigation including Jarvis/Price-Sheppard hearings to authorize forced medication and/or electroconvulsive therapy; Judicial Appeal Panel court trials involving petitions for discharge from persons civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities; Section 1983 civil rights actions in state and federal district and appellate courts; petitions for Writ of Habeas Corpus in

state and federal courts; as well as providing legal advice to state-operated facilities administration and staff.

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 individuals providing services in programs licensed by DHS, respond to expungement petitions in district court to preserve judicial and administrative records for disqualification, and also appear in administrative proceedings and appellate courts to uphold licensing actions against programs licensed by DHS.

The following are some examples of specific matters handled by the division:

- ***James Kasper v. Commissioner of the Minnesota Department of Human Services:*** defended the constitutionality of recent permanent disqualification legislative amendments to the Background Studies Act at the Minnesota Court of Appeals.
- ***Mahnomen County Human Services v. Pamela and Robert Keezer and Commissioner of the Minnesota Department of Human Services:*** defended the Department's interpretation of the Minnesota Indian Family Preservation Act, which ensures that counties assume the same financial responsibility for the care of Indian children as they do for non-Indian children.
- ***In The Matter Of the Civil Commitment of Jesus Travis:*** intervened on behalf of the Department to prevent the Minnesota Sex Offender Program from having to appear and provide evidence in civil commitment hearings, which is outside the Program's normal function.
- ***In Re Wilcox Trust:*** argued to the Minnesota Court of Appeals that a beneficiary's approximately \$2 million trust should be available for determining whether that individual is eligible for Medical Assistance.
- ***In Re Estate of Grote:*** answered a challenge to the state's estate recovery laws, thereby allowing the Department to continue to recover, on behalf of the state, public assistance funds it has paid.
- ***Glen Smith v. Commissioner of the Minnesota Department of Human Services:*** defended the constitutionality of disqualification procedures under the Background Studies Act at the Court of Appeals.
- ***Medical Assistance Plan Disapproval Litigation:*** represented DHS in a case against the federal Centers for Medicare and Medicaid Services ("CMS") regarding CMS'

disapproval of federal funding for state plan expenditures, including state plan expenditures for rehabilitative mental health services.

- ***Luis Serna v. Kevin Goodno***: defended at the Eighth Circuit Court of Appeals against a sex offender's claim that he was subject to an unreasonable and unconstitutional search and seizure by Department staff.

CIVIL PROTECTION SECTION

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 and successfully resolve consumers' disputes with businesses. The divisions also obtain court orders halting unfair and deceptive practices, which provide consumers protection on an ongoing basis. The monetary effect of enjoining deceptive practices on a going-forward basis provides immeasurable monetary value to Minnesota consumers.

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

- ***Unsuitable Sales of Annuities and Living Trusts to Seniors.*** The Office has continued to take action against insurance companies that unlawfully market and sell unsuitable long-term deferred annuities to seniors and misrepresent the terms of the marketed annuities in violation of Minnesota law. During the past fiscal year, the Office reached new settlements with: (1) AmerUs Life Insurance Company and American Investors Life Insurance Company (both of which are now part of Aviva USA Corporation); and (2) Midland National Life Insurance Company and the North American Company for Life and Health Insurance. These settlements are similar to previous settlements that the Office reached with Allianz Life Insurance Company of North America and American Equity Investment Life Insurance Company in the 2007-2008 fiscal year. Like the earlier settlements, the new settlements provide for full notice and restitution to seniors who purchased unsuitable annuities and require detailed changes to each company's business practices going forward. These settlements, together with the earlier settlements, affect the top four sellers of equity-indexed deferred annuities in the United States. Through the claims review process established in the settlements, Minnesota seniors are eligible for more than \$700 million in restitution offers from these insurance companies.

The Office continues to litigate its action against American Family Prepaid Legal Corporation, Heritage Marketing and Insurances Services, Inc., and Jeffrey and Stanley Norman, for the sale of boilerplate living trusts and millions of dollars of unsuitable deferred annuities to Minnesota seniors. Trial in that action commenced in June of 2009, and resumed in September of 2009.

- ***Unlawful Foreclosure Consulting.*** This Office continues to address the problem of unlawful foreclosure consulting. The Office has filed a dozen lawsuits against out-of-state companies for violating Minnesota's foreclosure consulting laws, Minn. Stat. § 325N.01 *et. seq.* The suits alleged that the defendant companies used websites, targeted mailings, and/or the telephone to solicit financially-distressed homeowners by assuring

them that the companies could stop the foreclosure process and save their homes from foreclosure, but failed to deliver on their promises. The suits also alleged that the defendants unlawfully charged customers an up-front fee before any services were performed, and failed to include required safeguards in their contracts with Minnesota homeowners in violation of Minnesota law. In each case, the Office obtained judgments against the companies involved, which required them to cease doing business in the state, pay restitution to affected homeowners, reimburse the state for its costs and attorneys' fees, and also pay a substantial civil penalty if any of these terms were subsequently violated. In total, judgments and settlements that this Office procured during the most recent fiscal year provided for approximately \$250,000 in restitution to homeowners, \$100,000 in civil penalties (plus an additional \$500,000 in stayed civil penalties), and over \$50,000 in payments to the State for its costs and attorneys fees.

- ***Predatory Lending.*** The Office filed a lawsuit against Source Lending Corporation ("Source Lending"), a Plymouth, Minnesota mortgage broker, and its owner and president for using false, misleading, and deceptive acts and practices to sell risky and complex residential mortgage loans to Minnesota homeowners. Among other things, the lawsuit alleges that Source Lending used "bait and switch" tactics to mislead consumers about the terms of the loans, and engaged in serial refinancings that were not in the best interest of the affected consumers. The lawsuit seeks injunctive relief, restitution, civil penalties, and costs and attorneys' fees, among other relief. This case is set for trial in January, 2010.
- ***Abusive Telephone Practices.*** During the past fiscal year, the Office continued to prosecute its lawsuit against Sprint Nextel, one of the nation's largest wireless carriers. The lawsuit alleges that Sprint Nextel violated Minnesota's Consumer Fraud Act and Deceptive Trade Practices Act by improperly entering consumers into wireless contracts and by extending customers' contracts without providing notice or obtaining meaningful consent. The suit further alleges that, as a result of these unauthorized contracts and contract extensions, consumers were locked into wireless contracts with Sprint Nextel against their will or were improperly charged an early termination fee for ceasing service under an unauthorized "contract." Following this Office's lawsuit, Sprint Nextel and several other leading wireless carriers began to prorate the early termination fees that they charge to consumers. Trial of this matter is currently scheduled to begin in the Spring of 2010.
- ***Abusive Debt Collection Practices.*** On July 15, 2008, the Office filed a lawsuit against Afni, Inc. ("Afni"), an Illinois debt collection agency, for attempting to collect debts from Minnesota consumers who stated that they did not owe the debts at issue. In June of 2009, this Office reached a settlement with Afni, whereby it agreed to make changes its business practices, to ensure that the correct debtor is contacted and allow consumers who are contacted in error to easily dispute the debt. In addition, the Office separately reached a settlement agreement with Premium Asset Recovery Corporation ("PARC") in April of 2009, regarding its attempt to collect old debt from Minnesota consumers who received medical care at the Pelican Valley Clinic. As a result of the settlement, PARC agreed to cease all collection attempts and issue full refunds to consumers.

- ***Health Club Closings.*** Under the Minnesota Club Contracts Act, Minn. Stat. §§ 325G.23-.28, the Office of Attorney General is responsible for the registration and oversight of all health, social referral, and buying clubs that operate in Minnesota. The Office currently monitors approximately 500 registered clubs, many of which accept pre-paid membership dues. The Office has continued to assist Minnesota consumers in recovering pre-paid membership dues paid to clubs that unexpectedly close their doors. During the past fiscal year, this Office returned over \$80,000 owed to more than 360 pre-paid health club members.
- ***Deceptive Credit Offers.*** In February of 2009, the Office entered into a settlement with Dell, Inc. and Dell Financial Services (collectively “Dell”), to resolve consumer claims of deceptive interest rate offers, warranty service, and consumer rebates.
- ***Harmful Consumer Products.*** In February of 2009, the Office entered into a settlement with Mattel, Inc., concerning the presence of lead in Mattel’s toys. As a result of the settlement, Mattel agreed to pay the State \$231,447, and accelerate compliance with the new lead limits contained in the Consumer Products Safety Improvement Act.
- ***False Advertising.*** During the last fiscal year, the Office also entered into Assurances of Discontinuance with a rug distributor and a liquor store over their false advertising claims. Both companies agreed to cease all deceptive advertising, refrain from making similar claims in the future, and make payments to the state.
- ***Telemarketing Fraud.*** This Office obtained a judgment in a suit involving a Florida corporation that violated Minnesota’s consumer protection laws through a telemarketing scheme aimed at coercing government agencies and small businesses to pay for unwanted chemical products, by offering “free” product samples and then billing for the samples or shipments of unordered products.
- ***Construction Fraud.*** In April of 2009, the Office filed a lawsuit against Pioneer Building Systems, its owner and operator Dennis L. Burton, and Quality Steel Buildings, a company operated by Mr. Burton's girlfriend. The lawsuit alleged that Burton charged Minnesota farmers and small businesses at least \$265,375 for the sale of steel farm and storage buildings that he failed to deliver. The lawsuit further alleged that, once Burton received customers' deposits, he failed to deliver the buildings or to refund the deposits. In addition to other relief, the lawsuit seeks to prevent Burton from marketing steel buildings, directly or indirectly, to Minnesota consumers.
- ***Dairy Dispute*** - In the spring of 2008, the Office and the MPCA brought action in Marshall County Court against the Excel Dairy of Thief River Falls, Minnesota based upon hundreds of violations of the State's ambient air quality standards stemming from the Dairy's three manure basins.

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 electric, natural gas, and telecommunications industries, particularly with regard to utility rates, reliability of service, and service quality. 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.

RATE CASES.

The RUD represents the interests of residential and small business ratepayers in utility rate cases wherein the companies request increases in their utility rates. The RUD has participated in the following rate cases:

- ***Minnesota Power Electric Rate Case.*** The RUD has consistently opposed steep utility rate increases, particularly during hard economic times affecting Minnesota Power’s Iron Range customers. The RUD opposed Minnesota Power’s proposed rate increase of 9.69 percent, or \$45 million per year, most of which was earmarked for its residential and small business customers. The Commission approved an increase of approximately \$21 million per year, although the Administrative Law Judge recommended a \$7.7 million rate increase, and the Office of Energy Security recommended no increase at all. Upon reconsideration, the Commission was convinced by RUD to reduce Minnesota Power’s \$21.1 million increase by \$2.645 million per year and not award the company an additional \$1.71 million per year it had requested.
- ***Xcel Energy Electric Rate Case.*** Xcel requested an increase in electric rates of \$156.065 million per year, or 6.05 percent. In the course of the rate case, the Office conducted a review of Xcel’s corporate expenses, including travel and entertainment, and other expenses of corporate executives, board members, and other employees. As a result of the review, Xcel agreed to reduce its requested rate increase by \$3.862 million per year to account for travel and entertainment expenses objected to by RUD. The \$3.862 million per year adjustment includes caps on hotel and meal expenditures as well as the exclusion of non-utility-related costs. Xcel also agreed to change its policies to ensure that costs charged to Minnesota ratepayers are reasonable and necessary for the provision of utility service. As part of the rate case, RUD also filed testimony opposing Xcel’s proposed increase for various other costs, including nuclear plant depreciation and decommissioning expense, a nuclear rate stability plan, nuclear refueling expenses and cost allocations. RUD also proposed a cap on the amount of fuel costs that can be automatically recovered from customers because currently there is no incentive to control this significant cost. Xcel settled the fuel clause adjustment cap issue with the RUD, agreeing that upon the conclusion of the rate case, Xcel will propose an incentive mechanism to control fuel costs after the rate case is completed. The matter is pending before the Commission.

- ***Minnesota Energy Resources Corporation ("MERC") Natural Gas Rate Case.*** The RUD has opposed high monthly residential customer charges, which are fixed charges that every ratepayer must pay no matter how much or how little natural gas they use. MERC asked for a \$9.00 monthly customer charge, which was recommended by the Administrative Law Judge to the Public Utilities Commission. The RUD staff opposed the \$9.00 customer charge, arguing that it was too dramatic an increase for the residential ratepayers. The Commission rejected the Administrative Law Judge's recommendation and, based in large part on the RUD's arguments, ordered that the residential customer charge be set at \$7.25, rather than \$9.00.
- ***CenterPoint Energy Natural Gas Rate Case.*** CenterPoint filed to increase rates to produce an overall 3.9 percent revenue increase, or \$60 million per year. According to CenterPoint, the major drivers were declining use per customer, increased bad debt costs, and inflation. CenterPoint's proposal includes a decoupling mechanism, and a bad debt expense tracker recovery mechanism. These are all automatic recovery mechanism which all but guarantee the company a revenue stream regardless of how much or little natural gas it sells to its customers. RUD prepared testimony opposing the decoupling proposal, the tracker for bad debts, the environmental tracker, and the increase in the residential customer charge. The decoupling proposal targets residential and small business customers, but excludes large industrial and commercial customers. The Office also investigated CenterPoint's corporate expenses, including travel and entertainment, and other expenses of corporate executives, board members, and other employees. During the course of the entertainment and travel expense review, CenterPoint agreed to reduce its requested rate increase by \$300,000 per year as a result of RUD's investigation. The RUD will also oppose awarding CenterPoint \$111,000 per year in lobbying expenses because these are often not in the interest of the ratepayers. The matter is pending before the Commission.

OTHER UTILITY MATTERS:

- ***Minnesota Power's Petition to Purchase the City of Duluth's Steam Boilers.*** Minnesota Power filed a petition with the Commission to purchase Duluth's steam generating plant related facilities, or steam boilers, for \$2.5 million, which Minnesota Power had sold more than twenty years ago to the City of Duluth for \$1. Minnesota Power also requested Commission approval of Minnesota Power's plan to invest \$22 million in the steam boilers. RUD opposed this petition as not being in the public interest because Minnesota Power has not demonstrated that it needed the steam boilers to generate electricity for its ratepayers. The Commission tabled the matter until Minnesota Power comes back with missing information necessary for a proper decision.
- ***Accounting Treatment for Xcel's Nuclear Refueling Outage Costs.*** Xcel filed a petition requesting Commission authorization to change its accounting method for expenses associated with nuclear refueling of its three nuclear plants. In Xcel's last electric rate case, \$25 million was included annually for nuclear refueling regardless of actual costs of refueling. Xcel's proposal would have continued recovery of the \$25 million from Minnesota ratepayers, but would have deferred the actual refueling costs to a future rate

case and amortize it over an 18 month period rather than expense it in the year in which it occurred. These accounting changes would have amounted to a windfall of an additional \$25 million (or more) per year. RUD's efforts were instrumental in preventing this double recovery, with Xcel withdrawing its proposal to change its accounting method for ratemaking purposes outside of a rate case. The Commission referred the appropriateness of the change in accounting for ratemaking purposes to Xcel's electric rate case, now pending.

- ***Sale of Aquila's (now MERC's) Liquid Propane Peak Shaving Plants.*** Aquila attempted to retain all the profits it has made from selling propane plants that it used in its natural gas operations, while at the same time collecting the expenses for operating these plants after they were sold. RUD objected to Aquila's action and argued that the Commission should rule that the gain on the sale of Aquila's (now MERC's) Liquid Propane Peak Shaving Plants and the land underneath them should be credited to ratepayers who paid for these assets in their rates rather than allow Aquila to retain the profit on sale. Aquila claimed that the plants were sold for scrap, which the company argued would allow them to keep the profit on the sale. RUD argued that the buyer would not have bought the land under the plants if it were buying scrap. RUD also provided evidence that the buyer sold them as plants with a 10-year guarantee thus further supporting that the plants were not sold as scrap. The Commission approved a settlement in which Aquila agreed to pay to MERC the sum of \$180,000, which is being refunded to MERC's ratepayers.

TELECOMMUNICATIONS:

- ***Qwest AFOR.*** The RUD actively advocated on behalf of the interests of Qwest customers in connection with Qwest's proposed new alternative form of regulation ("AFOR") plan. Rather than submit to rate regulation, Qwest operates under an AFOR plan, and Qwest's current plan was set to expire as of the end of 2008. Qwest filed a proposed new AFOR plan in March of 2008. On June 30, 2008 Qwest sent a letter notifying the Commission of its intent to extend its current AFOR plan for an additional year pursuant to a provision in its current AFOR plan. The RUD objected to Qwest's requests arguing that Minnesota law prohibits the simultaneous consideration of an AFOR extension request and a proposed new AFOR plan. The Commission agreed and dismissed Qwest's proposed new AFOR plan. Qwest has recently proposed a new AFOR, which the RUD will analyze.

ANTITRUST:

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 09 include:

- ***Agricultural Market Merger Enforcement.*** Minnesota, along with several other states and the United States Department of Justice, filed suit to prevent the merger of beef packers JBS, S.A. and National Beef Packing Company, LLC. The lawsuit alleged that the merger would have concentrated upwards of 80 percent of the nation's feed cattle packing capacity in just three firms, Cargill, Tyson Foods and JBS. Moreover, the lawsuit stated that the merger would likely substantially increase the ability and incentives of these major processors to coordinate output and pricing. Accordingly, the merger threatened Minnesota farmers, feed lot operators and consumers. In the face of opposition from government enforcement agencies, the parties voluntarily abandoned the transaction.
- ***Pharmaceutical Litigation.*** Minnesota, together with the Federal Trade Commission, sued Lundbeck, Inc., formerly Ovation Pharmaceuticals, Inc., in federal district court in Minnesota, alleging that Lundbeck's acquisition of the pharmaceutical NeoProfen was an illegal acquisition and constituted unlawful monopolization. The lawsuit states that, after acquiring NeoProfen, Lundbeck possessed the only two drugs used to treat premature infants with patent ductus arteriosus, a potentially life threatening heart condition, and increased drug prices approximately 1300 percent. The litigation is pending.
- In addition, during the past year, the Office, along with many other states, continued to prosecute its lawsuit against Abbott Laboratories, Inc. and Fournier Industrie et Sante, and Laboratories Fournier S.A. The lawsuit alleges that Abbott and the Fournier entities monopolized and restrained trade in the market for fenofibrate cholesterol-lowering medications by engaging in a pattern of conduct including, but not limited to, commencing sham patent litigation, manipulating the regulatory structure for generic competition and technologically inhibiting the marketing of generic versions of various formulations of TriCor. This case is set for trial in January 2010.
- ***DRAM litigation.*** Minnesota and thirty-one other states sued the manufacturers of dynamic random access memory computer components who were allegedly engaged in a price-fixing scheme. The State alleges that the price-fixing scheme artificially inflated the cost of computer equipment acquired by the State. The litigation is pending.
- ***Multistate Enforcement of Final Judgment in Microsoft Litigation.*** Minnesota along with several other states entered into a second extension of the 2002 final judgment prohibiting Microsoft from engaging in anti-competitive conduct in the middleware market. Among the key provisions of the final judgment that were extended include: a prohibition on retaliating against original equipment manufacturers for selling software that competes with certain Microsoft software; a prohibition on restricting original equipment manufacturers from displaying icons for non-Microsoft software on the desktop; a requirement that communications protocols be made available to third parties such that third-party software can potentially interact better with certain Microsoft

software. An extension was necessary to permit all of the provisions of the 2002 final judgment to operate concurrently and with Microsoft in full compliance.

- ***Plavix Settlement.*** Minnesota, in concert with numerous other states, obtained a \$1.1 million fine and certain conduct remedies from Bristol Meyers Squibb for its violations of certain consent decrees in connection with its settlement of a patent dispute regarding the drug Plavix. Minnesota's share of the monetary fine was \$15,828.22. Important provisions of the conduct relief include additional reporting requirements related to certain future Bristol Meyers Squibb patent settlements.
- ***Telecommunications Merger Enforcement.*** Minnesota, numerous other states and the United States Department of Justice, filed suit to challenge Verizon Communications' acquisition of Alltel Corporation. The complaint alleged that the merger would have likely substantially lessened competition in certain Minnesota markets for mobile wireless telecommunications services. Plaintiffs obtained a negotiated consent decree, filed along with the complaint, which required, among other relief, that Verizon divest certain Alltel assets in the Fargo-Moorehead and Grand Forks cellular market areas, as well certain assets, within Minnesota cellular market areas 482, 483, 488. These cellular market areas include sections of Beltrami, Chippewa, Clearwater, Kandiyohi, Kittson, Lake of the Woods, Mahnomen, Marshall, McLeod, Meeker, Nicollet, Norman, Pennington, Red Lake, Renville, Roseau and Sibley counties. A key component of the divestiture is that the divested assets are to remain viable as to remedy the competitive harm alleged in the complaint. In addition, Minnesota and the other plaintiff states obtained a recovery of attorney's fees, of which Minnesota's share was \$36,925.
- ***Vitamins Price-Fixing Settlement.*** Minnesota along with several other states and certain private class actions, finalized a settlement relating violations of Minnesota antitrust law stemming from a world-wide conspiracy to fix the prices of, and allocate the markets for, vitamins A, B1, B2, B3, B4, B5, B6, B9, B12, C, E, H, astaxanthin, beta-carotene, canthaxanthin, as well as all blends and forms of these vitamins. Various firms sold these vitamins and participated in the settlement, including Akzo Nobel Inc., Bioproducts Incorporated, Mitsui & Co., Ltd. and Mitsui & Co. (U.S.A.), Inc., Chinook Global Limited and Chinook Group, Inc., Evonik Degussa GmbH, successor to Degussa AG, and Evonik Degussa Corporation, Lonza AG; Merck KGaA, E. Merck and EM Industries, Inc., Nepera, Inc., Sumitomo Chemical America, Inc. and Sumitomo Chemical Co., Ltd., Mitsubishi Tanabe Pharma Corporation and Tanabe U.S.A., Inc., UCB Pharma, Inc., and, Vertellus Specialties Inc. and Vertellus Chemicals SA.

PUBLIC ENFORCEMENT SECTION

APPEALS DIVISION

The Appeals Division provides assistance to county attorneys in felony appeals. Cases where the Appeals Division assisted county attorneys in FY 09 included, among other crimes: murder, sexual assault, drug distribution and manufacturing, child sexual abuse and felony assault.

The Appeals Division also handled numerous federal habeas corpus petitions challenging state-court convictions for non-metro counties during FY 09. Attorneys in the Appeals Division appeared on behalf of the state on seven habeas petitions in federal district court and five at the 8th Circuit Court of Appeals in FY 09.

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 prosecution on legal questions. Appeals Division attorneys provide training to local prosecutors and law enforcement officers on a variety of legal issues in the criminal justice system.

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 nursing homes, group homes, foster care homes, hospitals, board and care residences, and by home care providers.
2. Investigate and prosecute health care providers who commit fraud in delivery of the Medical Assistance program.

One goal of the division is to recover Medicaid funds from providers who fraudulently bill the program. The division does this through local, state and federal criminal and civil prosecutions and by participating on a national basis with other Medicaid Fraud units in the country. The majority of the national global cases involve pharmaceutical manufacturers.

The Medicaid Fraud Division has investigated and prosecuted Personal Care Assistants (PCAs) and Personal Care Provider Organizations (PCPOs) engaged in fraudulent billing practices. Typical schemes involve billing for services not provided, billing the authorized units rather than actual units provided, billing for RN services when there is no RN employed by the agency and billing when the agency has failed to conduct a background study. Civil settlements were negotiated with Personal Care Assistants and Personal Care Provider Organizations. In these cases the individuals and the agencies have agreed to pay restitution to the Minnesota Department of Human Services.

The division receives referrals from citizens, police, county adult protection workers, and state agencies. 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 prosecutors in the investigation phase of the cases by interviewing, reviewing documentation, and preparing complex financial spreadsheets of documents obtained by search warrant. Division attorneys also assist local prosecutors and accept referrals to prosecute cases around the state.

Many of the investigations involve financial exploitation of vulnerable adults. One case involved an employee at a group home who wrote out checks from the individual clients to "cash". The defendant admitted to writing out checks from the clients' accounts, having the clients sign the checks and using the money for her personal use.

In another case, a son obtained a power-of-attorney over his mother. While the mother was in a nursing home he made withdrawals from her account for gasoline, groceries, motorcycle parts and cash. He entered a guilty plea and agreed to repay the money.

A third financial exploitation case involved a son acting as his father's guardian. He obtained a cash-out mortgage, an auto loan and two new credit cards in his father's name. In all the defendant spent over \$144,000 in unlawful expenditures. He entered a guilty plea and agreed to pay restitution.

The division continues to provide training to social services, law enforcement and provider groups on financial exploitation, white collar fraud investigations and prosecution of crimes against vulnerable adults. In addition, the division worked with a vulnerable adult stakeholder's group to make changes to the financial exploitation statutes during the past legislative session. These changes clarify the statute to conform with case law.

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 assists county attorneys in prosecuting serious crimes in trial courts throughout Minnesota. Representative work during FY 09 included:

- Convicted Michael Zabawa of two counts of first-degree murder for killing Tracy and Alex Kruger, and attempted first-degree murder for shooting Hilary Kruger in their home in Waseca County. Zabawa broke into their home, shot Hilary and Tracy in their bedroom, and then shot their son Alex as he tried to call 9-1-1. The court sentenced

Zabawa to serve two life sentences consecutive to each other, and 20 years in prison for the attempted murder of Hilary.

- Convicted Randy Swaney in Rock County of two counts of first-degree murder for killing Carrie Nelson, who was working as a park worker in Blue Mound State Park in May 2001. The court sentenced Swaney to serve life in prison without the possibility of parole.
- Convicted Jeremy Hull in Mille Lacs County of two counts of first-degree murder for killing Lewis Wilczek. Hull killed Wilczek in Stearns County and then dismembered, burned, and tried to bury his body in Mille Lacs County. Hull had assumed Wilczek's identity by the time police arrested him. The court sentenced Hull to serve life in prison without the possibility of parole.
- Convicted Casey Oldenburg of aiding and abetting (after the fact) the murder of Lewis Wilczek. Oldenburg helped Hull transport and dispose of Wilczek's body. The court sentenced her to serve 86 months in prison.
- Convicted Josue Fraga of two counts of first-degree murder for killing two-year-old Samantha Fraga during a sexual assault in Nobles County. Fraga was Samantha's uncle and legal guardian. The court sentenced him to serve life in prison without the possibility of parole.
- Convicted Mark Horn of second-degree murder for killing his wife, Colleen Horn, in Polk County. The court sentenced him to serve 20 years in prison.
- Conducted grand jury proceedings and obtained first-degree murder indictments.
- Represented the State in post-conviction challenges to murder convictions.
- Prosecuted manufacturers and dealers of methamphetamine in multiple counties throughout the state. In several cases from southwestern Minnesota, law enforcement officers began their investigations based on the records of pseudoephedrine purchases at drug stores throughout Minnesota and South Dakota. In other cases, officers found evidence of meth manufacturing in vehicles and homes.
- Provided continuing legal advice and assistance to the Forensic Laboratory Advisory Panel for the Bureau of Criminal Apprehension, the Child Mortality Review Board, the Advisory Committee on the Rules of Criminal Procedure, CriMNet, the Stop it Now Advisory Committee, the Gang and Drug Oversight Council.
- Provided continuing review of Extradition paperwork for the Office of the Governor.

Division attorneys also 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 attorney 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 in 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, 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 impaired by alcohol or drugs while driving. The division is responsible for defending actions that resulted in the collection of over \$3.5 million in 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 5,000 district court Implied Consent proceedings and associated appeals 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 Minnesota.

- Published the Attorney General's 2009 DWI/IC Elements Handbook, utilized statewide by prosecutors, judges, defense attorneys and law enforcement professionals.
- Handled over 230 district court challenges and resulting appeals to other driver's license cancellations, withdrawals, revocations, suspensions, and license plate impoundments under Minn. Stat. § 171.19.
- Handled over 200 challenges to the driver's license revocations resulting from a glitch in the state court system's transition to a new conviction reporting system.
- 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. In FY 09, 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, 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. Moreover, the increasing complexity of our state's DWI law has created a specialized DWI defense bar which vigorously challenges more revocations in the hopes of getting prosecutors to negotiate or dismiss the underlying DWI charges.

In FY 09, the Public Safety Division handled over 5,000 implied consent cases. Implementation of the felony DWI law and recent challenges over accessibility to the Intoxilyzer instrument's computer source code continue to increase division caseload.

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 commission and 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 at both Canterbury Park and the North Metro Harness Race Track in Anoka County. The opening of the Anoka track and recent award of its Class A card club license increased the work on behalf of the Racing Commission during FY 09. The division provides the State Lottery with a wide range of legal 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.

AG: #2498604-v1

APPENDIX A: SERVICE HOURS				
By Agency or Political Subdivision for FY 2009				
Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
Partner Agencies				
Administration--Risk Management		1,591.7		\$ 154,054.90
AURI		2.3		\$ 232.30
Corrections (3)	2,712.1	4,418.0	\$ 209,520.00	\$ 359,866.80
Education Department	2,625.0	2,441.0	\$ 265,115.00	\$ 246,274.20
Gambling Control Board		153.5		\$ 15,503.50
Health	7,010.0	5,488.4	\$ 685,000.00	\$ 534,787.60
Housing Finance Authority	3,750.0	2,986.4	\$ 378,750.00	\$ 301,000.80
Human Services	21,600.0	21,287.2	\$ 2,071,200.00	\$ 2,087,967.00
Iron Range Resources & Rehabilitation	2,800.0	2,687.4	\$ 282,800.00	\$ 271,082.40
Medical Practices Board	8,100.0	6,701.3	\$ 606,500.00	\$ 475,098.30
Minnesota Racing Commission		208.4		\$ 21,048.40
Minnesota State Retirement System		208.0		\$ 18,404.40
MnSCU	7,250.0	8,037.6	\$ 660,950.00	\$ 778,709.80
Natural Resources	7,446.0	6,750.5	\$ 720,030.00	\$ 669,900.30
Petro Board		58.5		\$ 5,908.50
Pollution Control	18,027.0	15,860.1	\$ 1,751,727.00	\$ 1,562,213.50
Public Employees Retirement Association		979.8		\$ 98,959.80
Public Safety (3)	3,000.0	3,000.0	\$ 303,000.00	\$ 303,000.00
Teachers Retirement Association		119.5		\$ 12,069.50
Transportation	18,275.0	17,425.4	\$ 1,782,525.00	\$ 1,724,807.60
TOTAL PARTNER AGENCIES	102,595.1	100,405.0	\$ 9,717,117.00	\$ 9,640,889.60
Specialized Boards				
Accountancy Board		185.6		\$ 16,353.60
Animal Health Board		44.4		\$ 4,484.40
Architecture Board		247.2		\$ 23,904.60
Assessors Board		21.9		\$ 2,211.90
Barber/Cosmetology Board		103.5		\$ 9,933.70
Combative Sports Board		5.1		\$ 515.10
Client Security Board		225.8		\$ 21,540.80
Crime Victims Reparations Board		415.6		\$ 39,652.60
Land Exchange Board		2.4		\$ 242.40
Peace Officers Standards and Training Board		152.1		\$ 14,143.10
Private Detective Board		315.8		\$ 31,895.80
School Administrators Board		168.9		\$ 16,667.90
State Fair Board		32.3		\$ 3,262.30
State Investment Board		378.8		\$ 36,980.00
Teaching Board		1,004.3		\$ 97,933.70
Zoological Board		32.1		\$ 3,242.10
SUBTOTAL		3,335.8		\$ 322,964.00
Health Boards/Offices				
Behavioral Health & Therapy Board		303.9		\$ 23,669.70
Chiropractic Board		1,723.5		\$ 143,833.10
Dentistry Board		4,496.7		\$ 337,639.50
Dietetics & Nutrition Practice Board		23.5		\$ 1,784.70
Emergency Medical Services Regulatory Board		299.5		\$ 28,855.70
Health Professionals Services Program		46.6		\$ 4,706.60
Licensed Drug & Alcohol Counselor Program		688.2		\$ 50,142.20
Marriage & Family Therapy Board		242.9		\$ 17,591.50
Mental Health Practice Office		133.1		\$ 9,091.50
Nursing Board		4,134.0		\$ 356,395.40
Nursing Home Administrators Board		69.4		\$ 5,151.00
Optometry Board		149.0		\$ 10,048.80
Pharmacy Board		245.3		\$ 19,535.90
Physical Therapy Board		590.5		\$ 40,890.90
Podiatry Board		86.3		\$ 8,150.50
Psychology Board		2,551.6		\$ 197,033.00
Social Work Board		960.5		\$ 68,407.70
Veterinary Medicine Board		564.8		\$ 43,341.40
SUBTOTAL		17,309.3		\$ 1,386,269.10
Higher Education				
Higher Education Facilities Authority		1.7		\$ 171.70
Higher Education Services Office		893.3		\$ 90,007.10
SUBTOTAL		895.0		\$ 90,178.80

APPENDIX A: SERVICE HOURS				
By Agency or Political Subdivision for FY 2009				
Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
Other Executive Branch Agencies				
Administration Department		1,226.1		\$ 111,531.10
Administrative Hearings Office		104.2		\$ 9,811.20
Agriculture Department		1,504.9		\$ 150,472.30
Amateur Sports Commission		223.5		\$ 22,573.50
Archaeologist Office		5.7		\$ 575.70
Asian Pacific Minnesotans Council		1.9		\$ 191.90
Black Minnesotans Council		12.6		\$ 1,258.80
Campaign Finance Board		191.1		\$ 13,399.30
Capitol Area Architectural Planning Board		194.3		\$ 19,532.30
Center for Arts Education		74.8		\$ 7,453.60
Chicano/Latino Peoples Affairs Council		6.5		\$ 656.50
Commerce Department		7,846.5		\$ 792,082.50
Corrections Department (3)		3,687.9		\$ 372,477.90
Corrections Department/Community Notification		641.3		\$ 52,972.30
Disability Council		0.4		\$ 40.40
Employment & Economic Development Department		1,309.8		\$ 113,314.80
Environmental Quality Board		110.9		\$ 11,200.90
Executive Council		3.1		\$ 313.10
Explore Minnesota Tourism		26.0		\$ 2,161.40
Fanbault Academics		28.5		\$ 2,758.90
Finance		1,179.8		\$ 116,951.80
Firefighter Training & Education Board		40.6		\$ 4,100.60
Governor's Office		410.4		\$ 41,450.40
Historical Society		1.3		\$ 131.30
Human Rights Department		1,913.1		\$ 173,015.30
Indian Affairs Council		0.8		\$ 80.80
Judiciary Courts		880.9		\$ 88,970.90
Labor and Industry Department		5,462.9		\$ 549,917.50
Law Examiner's Board		171.6		\$ 16,834.80
Lawyer's Professional Responsibility Board		181.9		\$ 18,371.90
Legislature		152.1		\$ 15,362.10
Mediation Services Bureau		46.9		\$ 4,736.90
Military Affairs Department		230.0		\$ 23,184.00
Minnesota Commission Serving Deaf & Hard of Hearing People		0.7		\$ 70.70
Minnesota Gang Strike Force		176.1		\$ 17,786.10
Office of Enterprise Technology		125.3		\$ 9,771.10
Ombudsman for Mental Health/Retardation Office		27.8		\$ 2,807.80
Ombudsperson for Families		131.6		\$ 13,273.20
Pardon Board		0.8		\$ 80.80
Public Defender, Local		61.1		\$ 6,171.10
Public Defender, State		8.7		\$ 878.70
Public Safety Department (3)		30,014.3		\$ 2,599,761.90
Public Utilities Commission		3,566.8		\$ 357,624.80
Revenue Department		8,135.2		\$ 821,393.00
Revisor of Statutes		0.3		\$ 30.30
Rural Finance Authority		27.3		\$ 2,757.30
Secretary of State		1,236.2		\$ 119,713.40
Sentencing Guidelines Commission		17.2		\$ 1,737.20
State Auditor		16.5		\$ 1,666.50
State Lottery		26.0		\$ 2,294.80
Strategic and Long Range Planning Office		107.9		\$ 10,897.90
Veterans Affairs Department		106.2		\$ 10,717.00
Veterans Homes Board		364.1		\$ 35,895.50
Water & Soil Resources Board		563.4		\$ 56,903.40
SUBTOTAL		72,585.8		\$ 6,810,119.20

APPENDIX A: SERVICE HOURS				
By Agency or Political Subdivision for FY 2009				
Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
OTHER GOVERNMENT				
Aitkin County Attorney		10.1		\$ 1,020.10
Anoka County Attorney		5.6		\$ 565.60
Becker County Attorney		452.1		\$ 44,880.10
Beltrami County Attorney		709.1		\$ 63,983.10
Benton County Attorney		213.6		\$ 20,777.80
Big Stone County Attorney		480.6		\$ 37,344.20
Blue Earth County Attorney		949.2		\$ 75,367.00
Brown County Attorney		71.7		\$ 6,823.10
Carlton County Attorney		925.4		\$ 80,189.80
Carver County Attorney		245.3		\$ 21,780.70
Cass County Attorney		982.6		\$ 87,922.00
Chippewa County Attorney		289.5		\$ 24,616.50
Chisago County Attorney		323.7		\$ 28,737.70
Clay County Attorney		1,010.9		\$ 93,669.10
Clearwater County Attorney		131.7		\$ 12,689.90
Cook County Attorney		956.2		\$ 83,944.60
Cottonwood County Attorney		1,033.1		\$ 90,313.10
Crow Wing County Attorney		153.7		\$ 15,523.70
Dodge County Attorney		1,297.7		\$ 103,913.90
Douglas County Attorney		526.0		\$ 44,685.00
Fillmore County Attorney		121.2		\$ 8,414.00
Freeborn County Attorney		628.9		\$ 53,339.10
Goodhue County Attorney		615.4		\$ 57,629.00
Hennepin County Attorney		204.2		\$ 18,158.60
Houston County Attorney		80.2		\$ 7,796.60
Hubbard County Attorney		724.8		\$ 60,090.20
Isanti County Attorney		547.8		\$ 52,954.20
Itasca County Attorney		453.4		\$ 40,121.60
Jackson County Attorney		478.9		\$ 40,811.10
Kanabec County Attorney		819.5		\$ 64,466.10
Kandiyohi County Attorney		1,010.7		\$ 98,212.10
Kittson County Attorney		13.0		\$ 1,165.80
Koochiching County Attorney		94.6		\$ 9,324.60
Lake of the Woods County Attorney		231.7		\$ 14,923.90
Le Sueur County Attorney		65.4		\$ 4,126.00
Lincoln County Attorney		107.6		\$ 9,345.00
Lyon County Attorney		75.7		\$ 7,645.70
Mahnomen County Attorney		139.6		\$ 9,683.60
Martin County Attorney		443.8		\$ 36,221.80
McLeod County Attorney		19.6		\$ 1,078.00
Meeker County Attorney		307.5		\$ 29,603.90
Mille Lacs County Attorney		2,527.1		\$ 218,464.70
Morrison County Attorney		1,045.8		\$ 87,248.80
Mower County Attorney		429.5		\$ 40,435.50
Murray County Attorney		1.7		\$ 93.50
Nicollet County Attorney		158.1		\$ 15,968.10
Nobles County Attorney		1,093.3		\$ 90,022.30
Norman County Attorney		47.7		\$ 4,817.70
Olmsted County Attorney		465.9		\$ 47,055.90
Otter Tail County Attorney		1,090.8		\$ 101,444.60
Pennington County Attorney		64.0		\$ 6,017.80
Pine County Attorney		503.1		\$ 46,318.90
Pipestone County Attorney		686.5		\$ 66,916.90
Polk County Attorney		268.4		\$ 24,067.80
Pope County Attorney		52.6		\$ 4,397.20
Redwood County Attorney		433.1		\$ 40,403.50
Renville County Attorney		97.1		\$ 6,513.50
Rice County Attorney		1,247.0		\$ 99,607.40
Rock County Attorney		1,382.1		\$ 115,483.50
Roseau County Attorney		35.3		\$ 2,281.90
Scott County Attorney		501.5		\$ 41,382.50
Sherburne County Attorney		443.9		\$ 36,480.30
St. Louis County Attorney		764.4		\$ 75,842.80
Stearns County Attorney		708.1		\$ 64,972.30
Steele County Attorney		391.5		\$ 35,281.90
Stevens County Attorney		114.4		\$ 11,554.40
Swift County Attorney		1,405.0		\$ 110,243.20
Todd County Attorney		1,043.4		\$ 99,440.20
Traverse County Attorney		349.0		\$ 30,133.80
Wabasha County Attorney		16.0		\$ 916.80
Wadena County Attorney		377.8		\$ 33,617.60
Waseca County Attorney		1,019.2		\$ 86,273.40
Washington County Attorney		208.3		\$ 19,823.90
Watsonwan County Attorney		171.2		\$ 13,786.00
Wilken County Attorney		58.0		\$ 5,858.00
Winona County Attorney		266.8		\$ 20,401.00

APPENDIX A: SERVICE HOURS				
By Agency or Political Subdivision for FY 2009				
Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
Wright County Attorney		428.3		\$ 39,785.30
Yellow Medicine County Attorney		247.8		\$ 21,485.80
Various Cities		292.6		\$ 29,552.60
Various School Districts		73.5		\$ 7,423.50
Townships / Associations / Local Governments / Other		89.6		\$ 9,049.60
SUBTOTAL		38,550.7		\$ 3,374,722.30
TOTAL NON-PARTNER AGENCIES SUBDIVISIONS		132,676.6		\$ 11,964,253.40
TOTAL PARTNER/SEMI-PARTNER AGENCIES (from page A-1)		100,405.0		\$ 9,640,889.60
TOTAL NON-PARTNER AGENCIES SUBDIVISIONS		132,676.6		\$ 11,964,253.40
GRAND TOTAL HOURS/EXPENDITURES		233,081.6		\$ 21,605,143.00
Notes:				
(1) The projected hours of service were agreed upon mutually by the partner agencies and the AGO. Actual hours may reflect a different mix of attorney and legal assistant hours than projected originally.				
(2) Billing rates: Attorney \$101.00 and Legal Assistant \$55.00.				
(3) A number of agencies signed agreements for a portion of their legal services.				

APPENDIX B: SPECIAL ATTORNEY EXPENDITURES	
FOR FY 2009, BY AGENCY	
AGENCY	Amount
Administration	\$ 399,471.30
Education	\$ 8,778.14
Housing Finance Agency	\$ 5,807.45
Human Services	\$ 231.29
Labor and Industry	\$ 19,814.40
Minnesota Management & Budget	\$ 73,890.79
MnSCU	\$ 24,029.36
Perpich Center for the Arts High School	\$ 5,315.10
State Academies	\$ 3,080.00
Transportation	\$ 3,095.00
TOTAL	\$ 543,512.83

APPENDIX B: SPECIAL ATTORNEY EXPENDITURES	
BOND COUNSEL FOR FY 2009, BY AGENCY	
AGENCY	Amount
Agricultural and Economic Development Board	\$ 226,202.46
Employment and Economic Development	\$ 473,666.27
Higher Education Facilities Authority	\$ 125,070.87
Higher Education Services Office	\$ 120,785.04
Housing Finance Agency	\$ 393,457.16
Iron Range Resources and Rehabilitation	\$ 4,583.68
Minnesota Management & Budget	\$ 328,103.20
MnSCU	\$ 28,922.13
Rural Finance Authority	\$ 3,416.48
TOTAL	\$ 1,704,207.29
NOTE: Certain bond fund counsel are paid from proceeds.	