

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

**ANNUAL REPORT REQUIRED BY**

**Minnesota Statute Sections 8.15  
Subdivision 4 (2012)**

**Fiscal Year 2013**

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## **INTRODUCTION**

This report is intended to fulfill the requirements of Minnesota Statutes Section 8.15, Subdivision 4, for Fiscal Year 2013 (FY 2013).

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

## AGENCY SERVICES

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### ADMINISTRATIVE LAW

The Administrative Law division provides legal representation to the departments of Administration, Agriculture, Commerce, Minnesota Management and Budget, Labor and Industry, and Natural Resources, as well as the Housing Finance Agency, Iron Range Resources and Rehabilitation Board, Minnesota State Board of Investment, Board of Water and Soil Resources, Minnesota executive branch officials, and many other boards, agencies and commissions. The division also provides legal representation to the Minnesota State Colleges and Universities System and other state agencies in contract, lease and other transactional matters. The division's work during FY 2013 included:

- Provided advice to state agency clients on legal issues related to state governmental operations; assisted in drafting and revising leases, licenses and contracts; advised state agencies on intellectual property matters including registering trademarks on behalf of a number of state agencies.
- Advised the Department of Administration on various real estate matters, including lease terminations, leasing of MAC property by MPCA, conveyance of historical properties, rent escrow actions, the Department's leasing authority, acquisition of property through condemnation, sales of real property, and various issues related to the construction of light rail in the capitol complex.
- Provided legal representation to the Department of Administration, Information Policy Analysis division, in a lawsuit involving arbitrary-and-completeness appeals under Minn. Stat. § 13.04.
- Advised the Office of Administrative Hearings (OAH) regarding municipal boundary adjustment matters.
- Provided legal representation to and/or advised the Minnesota Department of Agriculture in various matters, including food safety violations, food borne illness outbreaks, raw milk and cheese dairy sales, pesticide application violations, grain and produce bond claims, data practices, Emerald Ash Borer quarantine and the Dupont Imprelis pesticide recall.
- Provided legal representation to the Board of Animal Health regarding chronic wasting disease control, animal hold periods, bovine tuberculosis buyout program, elk and deer regulation, inspections and research trials.
- Provided legal representation to the Campaign Finance and Public Disclosure Board in numerous cases to enforce lobbyist and campaign finance laws.
- Advised and provided legal representation to 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. Provided legal representation to the Department of Commerce to resolve over 50 contested cases which involved disciplinary action against licensees, including mortgage originators, real estate appraisers, real estate salespersons, collections agencies, securities salespersons, insurance salespersons and notaries public. Also advised, represented and defended the Real Estate Education, Research and Recovery Fund.

- Provided legal representation to the Minnesota Department of Commerce in connection with the agency's telecommunications, energy, and facilities permitting responsibilities as well as its Weights and Measures division. Represented Commerce before the Minnesota Public Utilities Commission and the Office of Administrative Hearings in matters such as contested utility rate increase petitions and requests to build, site or route large generators and high voltage transmission lines, and telecommunications enforcement litigation.
- Advised the Housing Finance Agency (HFA) regarding numerous loans to preserve, maintain and create low and moderate-income, single-family and multi-family housing. Provided client advice on aspects of HFA activity, including compliance with federal, state and local laws and regulations. Advised HFA on multi-family and single-family loan program requirements. Represented HFA in litigation related to real estate in which HFA is named as a defendant. Represented HFA in contested cases.
- Advised and provided legal representation to the Department of Labor and Industry (DLI), including the Construction Codes and Licensing division and its State Board of Appeals, and the Contractor Recovery Fund. Handled numerous disciplinary actions against residential building contractors, remodelers, roofers, electricians, plumbers, boiler operators and manufactured home installers for violations, including unlicensed activities, failure to satisfy judgments, failure to complete jobs and code violations. Represented DLI in over 35 contested cases against licensed and unlicensed individuals that were resolved. Provided legal advice to DLI, appeared in district court and the court of appeals on many matters including prevailing wage investigation and enforcement, and drafted pleadings involving payments to victimized homeowners.
- Provided legal representation and real estate title review to the Land Exchange Board. Prepared title opinions, reviewed deeds, and provided research on Indian title issues involving land exchanges.
- Represented the Commissioner of Minnesota Management and Budget (MMB) in district court actions with respect to claims made against the Torrens Assurance Fund. Advised state agencies regarding projects funded with general obligation bonds, and facilitated bond issuance by MMB and refinancing of over \$1.5 billion in general obligation and revenue bonds.
- Advised Minnesota State Colleges and Universities regarding a variety of real estate construction, contract, intellectual property, condemnation and licensing matters.
- Provided legal services to the Minnesota Department of Natural Resources (DNR) on a wide variety of Indian law matters including continued negotiation of Phase II of the 1854 Treaty case (Fond du Lac), implementation of the 1855 Treaty settlement agreement arbitration provision, White Earth settlement land transfers, and issues involving tribal sovereignty and state-tribal jurisdiction.

- Provided representation to DNR in an arbitration concerning royalty rates with its largest leaseholder, resulting in a recovery in favor of the DNR of approximately \$18 million, plus on-going additional revenues estimated at approximately \$12 million per year.
- Provided legal representation to the DNR before the Minnesota Court of Appeals and the Minnesota Supreme Court in an appeal of DNR rulemaking implementing the 2013 gray wolf hunting season. Secured amicus status for DNR in the federal lawsuit challenging the federal delisting of the gray wolf from the Endangered Species List.
- Provided legal representation to DNR in various waters use and appropriation permits and environmental review matters before the Office of Administrative Hearings, in District Court, and the Minnesota Court of Appeals.
- Advised DNR on various real estate title matters, including tax forfeitures, probate proceedings, trusts, life estates, adverse possession, bankruptcy, location of boundary lines, mineral forfeitures, indemnification, deed restrictions, declarations and protective covenants.
- Advised DNR on a lease termination and damages, potential condemnation proceedings for the Canisteo Pit, and the potential leasing of the Upper Post at Fort Snelling State Park.
- Provided legal representation to DNR forestry division on various matters, including fire suppression cost collection, bankruptcy, timber trespass, and statutory interpretation.
- Provided legal representation to DNR, MnDOT and BWSR in District Court in numerous quiet title actions and land registration proceedings.
- Provided legal representation to DNR in two road vacation proceedings, two mineral ownership cases, two condemnations of school trust land and other cases involving the ownership of a peninsula, an island and the establishment of a cartway.
- Assisted DNR with real estate acquisitions totaling over \$20.6 million and involving approximately 21,333 acres of land.
- Represented the Peace Officer Standards and Training Board.
- Provided legal representation to the Office of Secretary of State in connection with several lawsuits involving election procedures and voter registration information.
- Provided legal representation to the Minnesota State Board of Investment involving various investment management agreements and investments.
- Provided legal representation to numerous small boards and agencies and represented those boards in contested matters.
- Provided legal representation to the Board of Water and Soil Resources (BWSR).
- Provided legal services to the three statewide pension funds: Teachers Retirement Association (TRA), Minnesota State Retirement System (MSRS), and Public Employees Retirement Association (PERA) regarding benefits, tax ramifications, and governance issues. Represented the funds at contested case hearings and in appeals at the Minnesota Court of Appeals.

- Provided legal representation to the Department of Revenue in quiet title action and land registration action involving tax forfeited land.
- Advised MnDOT on various real estate matters including the location of the boundary between Minnesota and Wisconsin, a railroad encroachment, acquisition of contaminated properties and mortgage subordination and partial releases.

## **BOARDS AND AGENCIES**

The Boards and Agencies division provides legal representation to the Departments of Corrections, Employment and Economic Development, Health, Human Rights, Labor and Industry, Veterans Affairs, and the Client Security Board and the Bureau of Mediation Services.

### **DEPARTMENT OF CORRECTIONS**

Provided a broad range of legal services to the Department of Corrections (DOC) and state correctional facilities. Defended a high volume of lawsuits brought by inmates against the Department involving complex constitutional issues.

### **DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT**

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.

### **DEPARTMENT OF HEALTH**

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

Specific examples of the division's work for the MDH in FY 2013 include the following:

- ***Newborn Screening Program.*** Plaintiffs sued MDH in Hennepin County alleging that the MDH's collection, storage and use of blood samples pursuant to the Newborn Screening Program violated Minn. Stat. § 13.386, the genetic privacy law. In August 2010, the court of appeals affirmed the district court's order dismissing the case. In November 2011, the Minnesota Supreme Court reversed and remanded the case. Several groups of plaintiffs have actions pending in Hennepin County District Court seeking damages, injunctive relief, and an award of attorneys fees and costs.

- ***Licensing Laws Regarding Food, Beverages, Lodging Establishments, Public Pools, and Resorts.*** Provided legal representation to MDH in enforcement proceedings against individuals who operated unlicensed businesses, including food and beverage establishments and campgrounds and operated businesses in violation of the state food code.

A significant amount of work in FY 2013 involved providing legal defense of MDH's determinations that individuals or health care facilities violated the Vulnerable Adults Act by neglecting, abusing, or financially exploiting vulnerable adults. In addition, the division provided legal defense of MDH decisions not to allow certain disqualified individuals to work in direct contact with patients or residents of health care facilities or health care service organizations (such as home care agencies). Examples of these types of cases include:

- *Sexual Abuse of Vulnerable Adults.*
- *Disqualification Appeals.*
- *Nursing Home Neglect.*

#### **DEPARTMENT OF HUMAN RIGHTS**

Provide legal representation to the Department of Human Rights (MDHR) following MDHR's determination that there is probable cause to believe that illegal discriminatory conduct has occurred. Represented MDHR in litigation.

#### **DEPARTMENT OF LABOR AND INDUSTRY**

Provided advice and representation to the Minnesota Department of Labor and Industry (DLI). Engaged in litigation to enforce occupational safety and health standards, including cases regarding workplace fatalities. Engaged in litigation to enforce Minnesota labor laws, such as the Fair Labor Standards Act, including minimum wage and child labor laws.

#### **DEPARTMENT OF VETERANS AFFAIRS**

Provided advice and representation to the Minnesota Department of Veterans Affairs (MDVA), including defending the MDVA in lawsuits.

#### **MINNESOTA CLIENT SECURITY BOARD**

Brought collection actions on behalf of the Minnesota Client Security Board to collect and preserve debt obligations to the Client Security Fund. The Fund reimburses clients who suffer economic loss because of the dishonest conduct of their attorneys.



## **REVENUE/SCHOOLS**

### **OVERVIEW**

The Revenue/Schools division provides legal representation to the Minnesota Department of Revenue (Revenue). The division also provides legal representation to state agencies in a wide range of bankruptcy matters in Bankruptcy Court. The division provides legal representation to the State's complex and varied educational system, handling most student and some faculty and staff-related matters for the Minnesota State Colleges and Universities (MnSCU) system of 32 separate campuses. In addition to representing the numerous MnSCU campuses, the division also provides legal representation to the Minnesota Department of Education, the Office of Higher Education, and the Perpich Center for Arts Education and the State Academies.

### **TAX LITIGATION & BANKRUPTCY**

In FY 2013, the division handled over 300 active revenue and bankruptcy litigation cases. In addition, the division handled 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 (8<sup>th</sup> 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 \$32 million dollars.

Many of the large bankruptcy cases involve multi-million dollar state investments by the State Board of Investment, multi-million dollar tax debts to Revenue and significant state contracts with vendors or service providers who subsequently declare bankruptcy. The division provides legal representation to various state agencies filing claims in bankruptcy court to recover state funds and protect the state's priority of claims.

Reviewed and responded to numerous 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.

In FY 2013 the division obtained for the Department favorable rulings from the Minnesota Supreme Court in 10 of the 11 appeals. In FY 2013 the division also received a high number of multi-million dollar appeals, including several appeals of corporate tax assessments.

### **SIGNIFICANT RESOLVED TAX LITIGATION & BANKRUPTCY CASES:**

- Corporate Tax, Multi-National Food Corporation. Provided legal representation in a settlement for \$6.5 million in the Minnesota Tax Court in a suit by a large multi-national food corporation which challenged Revenue's assessment of corporate tax of over \$3 million. The settlement was significantly higher than the original assessment amount because it also resolved years of corporate tax that were outside the assessment period.

- Corporate Tax, Investment Bank. Provided legal representation in a settlement in the Minnesota Tax Court in a suit by a large investment bank challenging Revenue's assessment of corporate tax of about \$500,000.
- Corporate Tax, Pharmaceutical Vendor. Defended Revenue in the Minnesota Tax Court in a suit by a pharmaceutical corporation challenging Revenue's assessment of about \$500,000 of corporate tax.
- Corporate Tax. Obtained numerous favorable decisions and provided legal representation relating to settlements in the Minnesota Tax Court of assessment and collection actions against corporations for unpaid corporate tax of several million dollars.
- Sales/Use Tax. Provided legal representation in connection with a settlement in the Minnesota Tax Court of over \$1 million in a sales tax assessment of a large industrial corporation.
- Officer Liability Assessment for Corporate Officers. Obtained two favorable decisions at the Minnesota Supreme affirming Revenue's personal liability assessment of corporate officers of a large gasoline franchise for the payment of the franchise's unpaid sales and petroleum tax of over \$3 million dollars.
- Withholding Tax, Officer Liability. Obtained numerous favorable decisions at the Minnesota Tax Court affirming Revenue's personal liability assessment against corporate officers for the payment of a corporation's unpaid withholding tax of approximately over \$1 million dollars.
- Individual Income Tax on High Income Residents Claiming Non-Residency. Obtained favorable rulings from the Minnesota Supreme Court in three (3) separate suits by three high income individuals all challenging Revenue's assessment of income tax and asserting that each was not a resident of Minnesota for the assessment period, but rather a resident of a state with no state income tax. The assessments affirmed were \$2 million, \$1.7 million and \$3.5 million respectively, for a total of \$7.2 million. In two of these cases, the individuals challenged 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, Chapter 11 Filing of Very Profitable Bar and Restaurant. Defended Revenue's assessment of about \$1.4 million in Bankruptcy Court against a large bar and restaurant enterprise that failed for multiple years to properly collect and pay sales tax despite numerous Revenue audits, assessments and finally appeals filed in Minnesota Tax Court.
- 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. Division attorneys worked 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.

- 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 incomes were 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.

#### **MINNESOTA STATE COLLEGES AND UNIVERSITIES (MNSCU)**

The division provides legal representation to the MnSCU Chancellor's staff and administrators at institutions throughout the state. It provided legal representation to MnSCU in a variety of lawsuits initiated primarily by students and some by former staff against the MnSCU institution. In FY 2013 the division continued to litigate several employment law cases on behalf of MnSCU. The division provided client advice on a wide range of issues including student disciplinary proceedings, and various additional constitutional issues that arise in the context of educating, counseling and the housing of students and now employment law matters. Examples of the division's work for MnSCU during the last year include:

- Faculty Member Claim of Discrimination. Obtained a favorable denial of certiorari by the U.S. Supreme Court, thus affirming a judgment in the 8th Circuit Court of Appeals in favor of MnSCU against a claim of racial and pay discrimination.
- Amicus to the Minnesota Supreme Court. Submitted an amicus brief to the Minnesota Supreme Court on behalf of MnSCU arguing for upholding a university's ability to formulate and enforce professional standards of conduct in professional classes and instruction.
- 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). 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 included:

- Commissioner's Authority to Regulate Charter Schools. Obtained favorable decisions at the Minnesota Court of Appeals regarding the Commissioner's authority to enforce the state charter school statute and hold authorizers accountable for overseeing various aspects of charter school administration.

- Special Education. Successfully defended MDE in 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.
- Obtained Dismissals of Requests for Temporary Restraining Orders (TROs). Successfully defended MDE and obtained dismissals and denials of requests for temporary restraining orders filed against the Department on a variety of subjects, including a request for TRO to grant a transfer of authorizer in a charter school case.
- Maltreatment of Minors in Schools. Provided legal representation to MDE in several maltreatment hearings contesting MDE's findings of maltreatment by a school worker (such as a teacher, assistant teacher or bus driver). Successfully defended several appeals of MDE's final determination of maltreatment to state district court.

## **OFFICE OF HIGHER EDUCATION (OHE)**

The division provides 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.

## **STATE HIGHWAYS**

The State Highway division provides legal services to its primary client, the Minnesota Department of Transportation (MnDOT). A large part of the division's work involves eminent domain litigation. In addition, the division advises MnDOT and other state agencies involved in construction projects and represents the State when the 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 contractual requirements.

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 2013, the division:

- Provided legal representation to MnDOT in litigation related to eminent domain actions and appeals arising in connection with hundreds of properties that are acquired for roadways and other transportation projects such as light rail. The division also defends MnDOT against claims that its projects have resulted in inverse takings and provides legal assistance in voluntary sales of real estate for transportation projects.
- Represented the Commissioner in contested case hearings in regulatory matters such as highway turnbacks, and highway beautification.

- Advised MnDOT regarding its programs and offices such as Equal Employment Opportunity, Aeronautics, Railroads and Waterways, Project Development, State Aid, Research and Investment Management, Office of Motor Carrier Services, Office of Environmental Stewardship, and Office of Civil Rights.
- Appeared before the Minnesota Court of Appeals and Minnesota Supreme Court in appeals regarding attorney fee agreements, mandamus actions, and a good faith efforts determination by the Office of Civil rights.
- Appeared before the Federal District Court in matters including challenges to MnDOT's implementation of its Disadvantage Business Enterprise Program.
- Provided legal representation to MnDOT in its statutory prevailing wage enforcement responsibilities in attempting to recover unpaid wages for contractors' employees on MnDOT projects.
- Provided representation to the Minnesota National Guard regarding legal matters including contract review and real estate transactions.
- Provided legal representation to and advised MnDOT, Minnesota State Colleges and Universities, and the Minnesota Department of Natural Resources in construction contractor claims.

## SOLICITOR GENERAL

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The section provides litigation services to a variety of clients. This includes legal advice and litigation for agencies and officials in all branches of government. The legal representation involves various constitutional issues, as well as employment law and tort claims. The section also serves as general counsel to the Public Utilities Commission (PUC).

Examples of litigation include:

- Various civil rights actions brought against state officials in federal and state courts.
- Successfully completed defense of the validity of a statutory cap in payment to large paper and timber companies that had enrolled forest land in a program under the Sustainable Forest Incentive Act, saving the State approximately \$29,807,630.
- Additional recovery from a third-party of monies the State paid to I-35W bridge collapse victims.
- The validity of legislation that regulates electric power generation sources that Minnesota utilities may rely upon when powering Minnesota homes and businesses.
- The validity of campaign finance legislation.
- The recovery of taxpayer-financed student financial aid collected by a for-profit college corporation that allegedly unlawfully paid incentive compensation to its recruiters based on the enrollment of new students.
- State laws subjected to claims of federal preemption.

The section provides legal representation to State government on a broad range of employment issues and claims, including claims under the Minnesota Whistleblower statute, Family and Medical Leave Act (FMLA), Fair Labor Standards Act (FLSA), and claims of discrimination and harassment under federal and state anti-discrimination statutes. The section also represents the State in lawsuits involving labor issues. The section has represented state agencies in several class action lawsuits involving claims of discrimination. The section represents the State and state officials in actions filed in federal and state courts and before administrative tribunals.

In FY 2013, the section saved the State over \$2.8 million by resolving employment lawsuits.

The section also litigates tort claims against the State, its agencies and employees, in personal injury and property damage lawsuits. Claims include claims of negligence, medical malpractice, defamation, infliction of emotional distress, excessive use of force, interference with business relations and violations of federal civil rights. Examples include: highway crash cases in which the Minnesota Department of Transportation is faulted for inadequate design, construction or maintenance of a state highway; suits against the Departments of Human

Services and Corrections for deaths or injuries occurring in the institutions they operate; and claims against the Department of Natural Resources arising from snowmobile and ATV accidents on state trails and accidents in public waterway access sites. The section represents the State in litigation arising from the I-35W bridge collapse. \$8.9 million was recovered by the State relating to the Bridge collapse litigation, and the section saved the State over \$7.7 million in resolving claims against it related to the Bridge collapse. During FY 2013, the section saved the State more than \$5.9 million in its resolution of other personal injury litigation.

The section provides representation to the PUC in both state and federal courts. In the past year, the section has defended PUC decisions in state court involving matters related to the interim rates charged by a Minnesota electric utility and the recovery of franchise fees by a utility from its customers. In federal court, the section defended the authority of the State to set wholesale rates for telecommunications facilities and the authority of the State to regulate the use of new coal-fired electricity in the state. In addition, before the Federal Energy Regulatory Commission, the section defended the authority of the State to implement statutes regulating power supply agreements in Minnesota.

The section also advises the PUC on energy, siting and telecommunications matters that come before the agency. Energy matters for which the PUC seeks advice include: the rates and practices of electric and natural gas utilities providing energy services in the State of Minnesota. The section 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 section advises the Commission 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 section 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.

## LEGAL SERVICES

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### STATE RESOURCES

Attorneys in the State Resources division (SRD) provide legal advice and representation to the Minnesota Pollution Control Agency (MPCA) and the Environmental Quality Board (EQB).

Many enforcement actions involve 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 for serious or repeated violations. The division also assists the MPCA in negotiating stipulation agreements with the regulated parties to resolve more broad-based or serious violations. In situations where settlement is not reached, the enforcement matter is litigated on behalf of MPCA by SRD attorneys.

SRD also provides legal advice and litigation services to the MPCA on a variety of non-enforcement issues. Examples may include: tank leak cleanup cost recoveries; superfund cleanups; natural resource damages; Total Maximum Daily Load (TMDL's); bankruptcies; contract disputes; hazardous and solid waste disposal; creation of conservation easements and environmental covenants; purchases of easements and real property; groundwater contamination; federal facility superfund cleanups; individual septic treatment systems; administrative inspection orders; storm water runoff; air toxics; and federal new source review.

In FY 2013 the SRD represented MPCA at the Court of Appeals and obtained favorable decisions on six different matters, including a constitutional challenge (Wild Rice rules), a challenge to a permitting decision (ballast water), a challenge to a district court judgment in a feedlot enforcement case, a challenge to an order of the Commissioner enforcing solid waste rules, and an appeal of an environmental review decision. SRD also represented MPCA in a number of matters being heard at the Office of Administrative Hearings, and lawsuits brought by and against the MPCA in district court. An example of one such case is a lawsuit filed by the State against 3M Company for natural resources damages, including pollution of surface water and groundwater, from the disposal of PFC waste.

The SRD provided legal services to the MPCA on a variety of real estate and contract matters in FY 2013, including several real estate transactions for MPCA's closed landfill and tank leak programs and various contract issues, often regarding liability, intellectual property, data practices, and joint powers agreement issues. One of the real estate acquisitions involved the largest closed landfill covered by the closed landfill program.

SRD also provides legal advice to the Environmental Quality Board (EQB) with respect to the implementation of its delegated legal authorities and legal research needs.



## ANTITRUST AND UTILITIES

The Antitrust and Utilities division investigates potential violations of state and federal antitrust laws, and enforces these laws when it uncovers evidence of anticompetitive conduct. The division also represents 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 quality issues pursuant to statute.

The Minnesota Antitrust Act prohibits activities that restrain trade, including price fixing, bid rigging, group boycotts, unlawful abuses of monopoly power, and anticompetitive mergers. The division helps ensure consumers, businesses, and the government have a competitive environment in which to purchase goods and services. The division participates in numerous coordinated investigations of potential anticompetitive conduct by multiple state and federal enforcers of antitrust laws, including other state attorneys general, the U.S. Department of Justice, and the Federal Trade Commission.

Specific examples of the division's work in FY 2013 include:

- ***Ebooks Antitrust Investigation.*** The Antitrust and Utilities division participated in a multistate and federal investigation of collusion and other anticompetitive activities by Apple Inc. and the major publishers of Ebooks in the United States. The publishers' illegal actions were alleged to have resulted in millions of dollars of losses by Minnesota consumers in the form of higher prices for Ebooks. In FY 2013, this Office reached settlements with all the major publishers that provided Minnesota consumers with restitution, in addition to other relief.
- ***Credit Card Interchange Fee Settlement Multistate Intervention.*** As part of this settlement, plaintiffs/defendants included language releasing government-specific law enforcement claims that plaintiffs never possessed in the first place and have no authority to release. Minnesota and other states intervened in the settlement to oppose this improper attempt to release States' sovereign law enforcement claims. The matter remains pending in federal court in New York.
- ***Xcel Energy Electric Rate Case.*** Xcel filed a rate request for a \$285 million increase in rates. The division intervened in the rate case and contested multiple aspects of the request, including allowing costs for a coal plant that was not operating, improper accounting treatment of nuclear refueling costs and construction work in progress, application of a higher rate increase to residents and small businesses than to large business customers, and the excessive collection of interim rates. The PUC ultimately approved a \$103 million increase (approximately 36% of the original request). The PUC also ordered that Xcel pay a higher interest rate to customers on over-collected interim rates.

- ***MP Electric Rate Case.*** The division opposed Minnesota Power’s (MP) appeal to the Supreme Court of the Commission’s decision on interim rates in its previous rate case. Minnesota Power argued that the PUC erred when it determined that “exigent circumstances” existed and set interim rates at \$48.5 million (which was less than MP’s request). MP requested that the Supreme Court order the PUC to allow MP to recover the difference between the \$48.5 million approved for interim rates and the \$53.5 million eventually awarded in final rates. In FY 2014 the Supreme Court ultimately affirmed the decision of the PUC setting interim rates at \$48.5 million.
- ***Utilities’ Privacy Practices.*** Xcel filed a request with the PUC for a “privacy tariff” that would establish procedures for the privacy of customer data. The division supported Commission adoption of privacy policies for all utilities, but opposed adoption of specific tariff language which could be used to shield utilities from liability for privacy violations. The division recommended the Commission adopt standards that prevent utilities from using customer data for purposes other than providing utility service (unless the customer gives explicit, informed consent) or from transferring customer data to other entities for purposes other than providing utility service. The division also requested a review of appropriate standards for aggregating customer data to ensure that supposedly “anonymized” data disclosed by utilities cannot be used to identify customers. The PUC denied Xcel’s request for a privacy tariff and opened a docket on the use of customers’ private information by utilities, in which the division is participating.
- ***Multiyear Rate Plan.*** The division requested that the PUC adopt standards for reviewing multiyear rate plans—recently allowed by statute. The PUC initiated an investigation of multiyear rate plans and adopted specific standards for reviewing multiyear plans including a requirement that utilities clearly identify specific capital projects and other non-capital costs justifying a multiyear rate plan, that utilities file multiyear rate plans within a general rate case, that utilities not file an additional rate case during the course of an approved multiyear rate plan, that utilities proposing a multiyear rate plan explain how rates will be set at the conclusion of the plan, and that utilities refund any imprudent rate increases during the course of the multiyear plan.
- ***Renewable Energy SD, LLC Case.*** The division filed a lawsuit in Hennepin County District Court in January, 2013, against Renewable Energy SD, LLC (RESL) and its owner, president, and founder, Shawn Dooling. RESL took millions of dollars from Minnesota farmers for wind turbines and renewable energy projects that were not delivered as promised. The court granted the Office’s motion for a temporary injunction, halting all sales while the lawsuit remains pending.
- ***State v. Guardian Gold & Silver Exchange et al.*** This lawsuit was initiated against Guardian and its two principals, Raymond Hanisco and Shaun Waste, in January, 2013. The defendants took money from the consumers at issue, including numerous senior citizens, by soliciting tens of thousands of dollars from them to purchase precious metal coins and then failing to actually deliver the coins as promised. This Office has obtained a judgment of approximately \$1.38 million against Guardian. The litigation against the two principals continues.

- **Toyota Multistate.** This multistate action concerned the unexplained acceleration in certain Toyota vehicles. Certain state attorneys general settled the matter with Toyota, and a Minnesota Consent Judgment was approved on March 19, 2013. Minnesota received \$660,487.56 under the settlement. The Office continues to monitor Toyota's implementation of the restitution procedures required by the settlement, which will continue until 2014.

## **INFORMATION SERVICES AND LEGAL SERVICES PROCESSING**

The Information Services and Legal Services Processing divisions assists consumers, businesses and other organizations, who contact it for information and assists them in obtaining settlements with other parties. Through its efforts the division often eliminates the need for costly and time-consuming litigation for both parties.

## **LICENSING BOARD**

Some investigations for FY 2013 included:

- A podiatrist whose license was revoked for falsely billing insurers for services to 470 patients which were not covered by their insurance contracts;
- A dentist whose license was suspended and assessed a \$20,000 civil penalty for prescribing when prohibited by Order and billing for patient care under another dentist's name to receive a higher rate of reimbursement;
- A psychologist who was issued a conditional license for accepting child care services from a client;
- A nurse whose license was suspended for diversion of narcotics;
- A doctor of veterinarian medicine whose license was suspended for puncturing an animal's spleen while practicing when impaired;
- A chiropractor whose license was revoked and was convicted of three felonies for punching a female patient in the stomach and assault on two elderly persons;
- A licensed alcohol and drug counselor whose license was suspended for engaging in an inappropriate relationship with a client;
- A licensed marriage and family therapist who surrendered their license for exploiting a professional relationship with a client and engaging in inappropriate conduct; and
- A licensed acupuncturist whose license was suspended indefinitely for failure to maintain proper medical records, unethical conduct and engaging in inappropriate conduct with a patient.

During FY 2013, division investigators completed over 375 investigations.

The Licensing Board Legal division provides legal representation to the State's health licensing boards and the Health Professional Services Program.

The division advises the boards on legal issues such as procedural due process, subpoena power, peer review, and agency authority. The division represents the boards at disciplinary conferences and in contested cases.

During FY 2013, the division provided legal representation to boards in contested case proceedings before the Office of Administrative Hearings involving professional misconduct, unlawful practice, and mental health/chemical dependency. The division represented the Board of Medical Practice in several contested cases where physicians engaged in improper prescribing practices and the provision of substandard care. The cases resulted in public reprimands, and conditions being placed upon the physicians' licenses. The division represented the Board of Podiatric Medicine in a contested case against a podiatrist who engaged in substandard practice and billing fraud. The case resulted in the Board revoking the podiatrist's license to practice. The division also represented the Board of Chiropractic Examiners in a contested case to deny a license to a chiropractor who was a convicted felon from another state. This case resulted in the denial of the requested Minnesota license.

In addition to contested cases before the Office of Administrative Hearings, the division provided legal representation to 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 regularly provided legal representation to the boards where licensees failed to maintain sobriety as required by their disciplinary orders. The division represented the Board of Nursing before the Minnesota Court of Appeals when a licensee challenged the results of the Board's hearing.

Finally, the division represented the Board of Chiropractic Examiners in response to a lawsuit challenging a recently-enacted statute governing chiropractic advertising. The federal district court upheld the statute's constitutionality and the case is currently pending in the Eighth Circuit Court of Appeals.

The division provides legal representation to the Health Professionals Services Program, which is the health boards' diversion program for health care providers 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.

## **GOVERNMENT SERVICES**

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### **DISTRICT COURT TRIAL AND APPELLATE**

The District Court Trial and Appellate division provides prosecutorial assistance to county attorneys and local law enforcement agencies in prosecuting serious crimes and in the civil commitment of dangerous sex offenders. In addition, the division provides training for police officers and prosecutors.

The division assists counties in the prosecution of serious crimes in trial courts throughout Minnesota when requested by a county attorney. Representative work during FY 2013 included:

- Convicted Darek Nelson of first-degree murder for killing a female co-worker at the Pizza Ranch restaurant in Montevideo, Chippewa County. The court sentenced Nelson to life in prison without parole.
- Convicted Jason Dominguez of first-degree murder for killing Dustin Brown in Morrison County. The court sentenced Dominguez to life in prison without parole.
- Convicted Carl Muggli of murder causing the death his wife, Linda Muggli, in Koochiching County. The court sentenced Muggli to 180 months in prison.
- Convicted Jeremy Lemer and Desiree Shinholser of second-degree murder for their roles in the death of John Currier in Roseau County. The court sentenced Lemer to 306 months in prison and Shinholser to 216 months in prison.
- Conducted grand jury proceedings and obtained first-degree murder indictments.
- Represented the State in post-conviction challenges to murder convictions.
- Provided continuing legal advice and assistance to the Bureau of Criminal Apprehension, the Forensic Laboratory Advisory Panel, the Child Mortality Review Board, the Violent Crime Coordinating Council, the Advisory Committee on the Rules of Criminal Procedure, CriMNet, and the Stop it Now Advisory Committee.
- 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 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.

Division attorneys handled several cases relating to petitions for habeas corpus by individuals civilly committed as sexual predators. The division's attorneys also handled numerous cases in which civilly committed sexual predators filed motions to vacate their

commitments. As the population of committed sexual predators increases, the number of petitions for habeas corpus and such motions 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, narcotics investigations, search and seizure, suspect interrogation, evidence, working with grand juries, gang investigation and prosecution, and trial advocacy.

The division provides assistance to county attorneys in felony appeals. The cases handled in FY 2013 involved, among other crimes: murder, sexual assault, drug distribution and manufacturing, child sexual abuse and felony assault.

As part of the appellate work, the division also handled federal habeas corpus petitions challenging state-court convictions for non-metro counties during FY 2013. Attorneys in the division appeared on behalf of the State on three habeas petitions in federal district court and one at the 8th Circuit Court of Appeals in FY 2013.

Appellate attorneys assisted prosecutors by providing legal research and preparing legal memoranda, and assisted local prosecution with legal questions.

## **MEDICAID FRAUD**

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

1. Prosecute health care providers committing fraud in the delivery of the Medical Assistance program.
2. Upon request of a county attorney, assist in prosecuting 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.

The division recovers Medicaid funds from providers that fraudulently bill the program. The division does this through local, state and federal criminal and civil prosecutions and through participation in multi-district *qui tam* litigation with other states' MFCUs.

The division prosecutes Personal Care Assistants (PCAs) and Personal Care Provider Organizations (PCPOs) engaged in fraudulent billing practices. Typical schemes include billing for services not provided, billing for authorized units rather than actual units provided, billing for RN services when there is no RN employed by the agency, providing group care but billing as if one-to-one care is provided, and using identities of individuals not employed by the agency as if they were employees. Many fraud cases have a criminal neglect component because the recipient's condition is compromised due to lack of care.

One case in the past year involved the father who, through a county-administered Medicaid waiver program, hired two PCAs to care for his daughter. His daughter was disabled and was a Medicaid recipient. The PCAs provided two months of care when he terminated them. Unbeknownst to them, the recipient's father stole their identities by continuing to submit their timesheets to the PCPO who employed them, forging their signatures and work hours on timesheets, and submitting those timesheets to the PCPO. He added the PCAs' names to the mailbox outside his house so that the post office would deliver the PCAs' paychecks to his house. He perpetuated this scheme for several years, costing the State of Minnesota and U.S. government over \$100,000 in fraud. The defendant pled guilty to MFCU charges, including theft by false representation and identity theft, and was ordered to pay back \$120,000.

Over the past year, the unit has also prosecuted several cases involving financial exploitation of vulnerable adults. In one example, a greater-Minnesota sheriff's office referred a case to the MFCU involving a daughter who, as her mother's guardian, helped herself to her mother's modest finances. The mother lived with her daughter's family for several years when, on a spring day, she went missing for several hours and was found wandering 10 miles from the family's home. The mother's dementia had progressed to the point where she couldn't remember where she was. Adult protective services removed her from her daughter's home and placed her in a nursing home. Despite her mother no longer living in the family home, the daughter continued withdrawing \$1000 per month in "rent" from her mother's bank account. The daughter pled guilty to a charge of financial exploitation of a vulnerable adult.

The Medicaid Fraud division also intervenes in civil lawsuits under the Minnesota False Claims Act.

## **PUBLIC SAFETY**

The Public Safety division provides legal representation to the Commissioner of Public Safety at thousands of implied consent hearings each year in which drivers contest the revocation of their licenses due to driving while impaired by alcohol or drugs. The division is responsible for defending actions that resulted in the collection of approximately \$1.2 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 nearly 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 training on DWI procedures and traffic safety laws for law enforcement officers and prosecutors throughout Minnesota.
- Published the 2013 DWI/IC Elements Handbook, utilized statewide by prosecutors, judges, defense attorneys and law enforcement professionals.
- Handled 167 district court challenges and resulting appeals to other driver's license cancellations, withdrawals, revocations, suspensions, and license plate impoundments under Minn. Stat. § 171.19.
- Argued appeals to the Minnesota Court of Appeals and the Federal District Court resulting from district court appearances involving the revocation, suspension, cancellation, or withdrawal of driving privileges.
- Argued to the Federal District Court addressing various federal claims including § 1983.

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. 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.

In FY 2013, nearly 16 percent of all driver's license revocations were challenged in court. Today's challenge rate is the result of the toughening of DWI laws by the Legislature over the years, including the ability to use an implied consent revocation to impound license plates, forfeit motor vehicles, and enhance subsequent criminal offenses to gross misdemeanor and felony violations. Because drivers have more at stake from an alcohol-related license revocation on their driving records, they are more likely 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. Implementation of the felony DWI law, statutory increases in the length of revocation periods, and availability of ignition interlock use for repeat offenders continue to increase the division caseload. Challenges over the accessibility to the Intoxilyzer breath test instrument's source code declined after the Minnesota Supreme Court's ruling in the source code case, but numerous challenges to the instrument's reliability continued based on a related claim that electronic chips in the instrument allowed for invalid test results. On May 14, 2013, Judge Abrams in the First Judicial District dismissed the consolidated proceedings after petitioners failed to provide evidence that would trigger the need for a hearing.



The recent United States Supreme Court decision in *Missouri v. McNeely*, 133 S. Ct. 1552 (2013), where the Court held that the natural dissipation of alcohol in a driver's blood does not create a *per se* exigency to the warrant requirement opened the floodgates to Fourth Amendment challenges to Minnesota's Implied Consent Law. On September 11, 2013, the Minnesota Supreme Court heard argument in *State v. Brooks*, A11-1042, A11-1043, where the Attorney General's Office submitted an Amicus Brief.

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

With regard to the Minnesota Racing Commission, this division provides legal representation to the commission and stewards in appeals of disciplinary action taken against horse owners, trainers, and jockeys.

## **CIVIL LAW**

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### **SOCIAL SERVICES**

The Social 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 matters concerning Minnesota Health Care Programs (MHCP), continuing and long-term care, health care compliance, and benefit recovery. MHCP includes Medical Assistance and MinnesotaCare, which together cover approximately 862,000 Minnesotans. In continuing care, division attorneys represent DHS on matters concerning autism services, aging and adult services, disability services, emergency medical assistance, and personal care assistance. In the compliance and recovery area, division attorneys handle health care compliance matters and recover payments for health care services from providers, responsible third-parties, and estates.

### **CHILDREN AND FAMILY SERVICES**

Division attorneys 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, the Federal Supplemental Nutrition Assistance Program (SNAP," formerly called Food Stamps) and Group Residential Housing. 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. In children's protection, attorneys represent DHS in matters concerning children's welfare, adoption, foster care, guardianship, tribal issues, and other matters.

### **MENTAL HEALTH**

Division attorneys in the mental health area represent DHS's adult and children's mental health programs, chemical dependency programs, 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). Division 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, child foster care, child care, and services for mental health, developmental disabilities, and chemical health. Division attorneys appear in administrative proceedings and district 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:

- ***A.A.A. v. DHS:*** division attorneys represented the department in a case before the Minnesota Supreme Court that addressed the scope of recent statutory changes regarding public assistance.
- ***Supreme Court Appeal Panel:*** division attorneys handled numerous hearings before the SCAP on petitions from civilly committed individuals for transfer, provisional discharge, or discharge.
- ***Jarvis/Price-Sheppard Hearings:*** division attorneys handled numerous hearings to authorize medically necessary medication and/or therapy for patients who lack the legal capacity to make the decision themselves.
- ***Medicaid Overpayment Recovery:*** division attorneys represented the State of Minnesota in connection with the recovery of overpayments in the Medicaid program.
- ***Karsjens, et al. v. Jesson, et al.:*** division attorneys are defending the State of Minnesota against a class action alleging unconstitutional treatment and conditions at the Minnesota Sex Offender Program.
- ***Disqualification Matters:*** division attorneys handled disqualification proceedings; for example, defending the state's disqualification of an individual who sought employment as in a facility serving vulnerable adults after having been convicted of malicious punishment of a child.
- ***Walker v. Jesson:*** division attorneys are defending the DHS commissioner in a taxpayer lawsuit over the use of public funds.
- ***Semler v. Jesson:*** division attorneys represented the DHS Commissioner in opposition to a petition for transfer, provisional discharge, and discharge brought by an indeterminately committed sex offender.

## CHARITIES/CIVIL

The Charities/Civil division serves a number of functions. First, it oversees and regulates Minnesota nonprofit organizations and charities pursuant to the Attorney General's authority under Minnesota Statutes and common law. Second, the division maintains a public registry of charitable organizations and professional fund-raisers that operate in the State. Third, the division enforces State laws.

The Charities/Civil division oversees laws relating to nonprofits and charitable organizations. By statute, the Attorney General's Office receives notice of certain charitable trust and probate matters filed in the district courts and has reviewed over 300 such notices in the last fiscal year. When necessary, the division acts to protect charitable assets and represents the interests of charitable beneficiaries that might otherwise be unable to represent themselves.

The division also receives notice of the dissolution, merger, consolidation, or transfer of all or substantially all assets of Minnesota charitable nonprofit corporations. It received 161 such notices in the last fiscal year. The division reviews these notices to ensure that charitable assets are protected during these transactions and used for the purposes for which they were solicited and held.

Additionally, the Charities/Civil division responds to complaints about nonprofits and charities, and investigates allegations of fraud, misuse of funds, and other wrongdoing by nonprofits and charities. Depending on the circumstances, these investigations can lead to formal legal action, or are resolved by working with nonprofit boards to bring them into compliance with the requirements of Minnesota law.

Another oversight function of the division is to educate officers and directors of nonprofit organizations about nonprofit and charities laws in Minnesota. The division provides education to nonprofits and charities on important topics such as 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.

The division brings suit against organizations that commit charitable solicitation fraud or otherwise violate the State's nonprofit and charities laws. Through the enforcement of laws governing nonprofit and charitable organizations, the Charities/Civil division helps combat fraudulent solicitations, deter fraud in the nonprofit sector, educate the public about charitable giving, and hold nonprofit organizations accountable for how they raise, manage, and spend charitable assets.

Minnesota law requires charitable organizations and professional fund-raisers to register and file annual reports with the Attorney General's Office. In the last fiscal year, \$578,906 in registration fees were deposited to the State's general fund. At the end of the fiscal year, the division had registered and is maintaining public files for almost 10,000 charitable (soliciting) organizations, over 2,800 charitable trusts, and over 400 professional fund-raisers. The information from these files allows the donating public to review a charitable organization's

financial information, allowing for greater transparency, and is made available to the public at the Attorney General's Office and in summary form on the "Charities" page of the Attorney General's website.

The division also enforces State laws. The following are examples of investigations and suits brought or resolved in the 2013 fiscal year by the Charities/Civil division:

- The division sued estate-sale company Birkeland & Associates and its owner, Craig Birkeland, after learning that the defendants had failed to pay dozens of clients their shares of estate-sale proceeds. Victims were often vulnerable after a death in the family or a divorce. The Court ordered a judgment against the defendants, permanently barring them from working in the estate-sale industry in Minnesota, and provided for a substantial monetary judgment for the State.
- The division investigated the proposed merger between Sanford Health and Fairview Health Services, which includes the University of Minnesota Medical Center. The proposed merger, which was abandoned by the hospitals, raised a host of nonprofit and charities issues regarding the potential for the out-of-state transfer of the Minnesota hospitals' charitable assets.
- The division sued two out-of-state companies that operated as online payday lenders – Sure Advance, LLC and Integrity Advance, LLC – because the terms of their payday loans given to Minnesotans did not comply with Minnesota law. The Sure Advance litigation settled. In settlement, Sure Advance agreed to stop doing business in Minnesota, or to bring its operations into compliance with Minnesota law. The State also recovered a substantial monetary judgment. The Integrity Advance litigation was resolved on summary judgment. The Court ordered Integrity Advance to stop lending to Minnesotans or to bring its operations into compliance with Minnesota law, and provided for a substantial monetary judgment for the State.
- The division sued in federal court Accretive Health, Inc., a Chicago-based debt collector and manager of the "revenue cycles" of Fairview Health Services and North Memorial Health Care, Minnesota nonprofit hospitals. Accretive compiled a high volume of extremely sensitive and personal medical, financial, and other records involving thousands of Minnesotans. That information was lost when an unencrypted laptop was left in plain sight in a rental car and the laptop was stolen. In addition, Accretive orchestrated and implemented practices to collect money from Minnesota patients in hospital emergency rooms, at patient bedsides, and at hospital registration desks in ways and using tactics that violated Minnesota law. In settlement, the State enjoined Accretive from doing business in Minnesota and recovered a substantial monetary judgment.

**APPENDIX A: SERVICE HOURS**  
**By Agency or Political Subdivision for FY 2013**

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<b>Partner Agencies</b>				
Administration--Risk Management		2,414.2		\$ 249,767.60
AURI		5.6		\$ 688.80
Corrections (3)	2,031.5	3,071.2	\$ 232,020.00	\$ 365,591.60
Education Department	1,972.0	1,203.1	\$ 242,556.00	\$ 147,084.80
Gambling Control Board		128.1		\$ 15,756.30
Health		6,950.5		\$ 850,451.00
Housing Finance Authority	2,750.0	1,891.3	\$ 338,250.00	\$ 232,492.40
Human Services	20,700.0	19,001.3	\$ 2,463,600.00	\$ 2,319,642.40
Iron Range Resources & Rehabilitation		237.7		\$ 28,918.10
Medical Practices Board	7,600.0	4,161.1	\$ 681,800.00	\$ 370,558.80
Minnesota Racing Commission		367.5		\$ 45,202.50
Minnesota State Retirement System		198.4		\$ 24,271.20
MnSCU	6,200.0	6,364.6	\$ 707,600.00	\$ 728,159.30
Natural Resources	6,550.0	7,307.9	\$ 796,850.00	\$ 884,005.20
Petroleum Tank Release Compensation Board		60.4		\$ 7,429.20
Pollution Control	9,600.0	9,225.3	\$ 1,180,800.00	\$ 1,131,329.40
Public Employees Retirement Association		766.5		\$ 94,257.50
Public Safety (3)	3,600.0	3,972.9	\$ 442,800.00	\$ 411,683.20
Revenue (3)	3,000.0	3,000.0	\$ 369,000.00	\$ 369,000.00
Teachers Retirement Association		32.5		\$ 3,997.50
Transportation	13,000.0	11,877.6	\$ 1,599,000.00	\$ 1,447,794.30
<b>TOTAL PARTNER AGENCIES</b>	<b>77,003.5</b>	<b>82,237.7</b>	<b>\$ 9,054,276.00</b>	<b>\$ 9,728,081.10</b>
<b>Specialized Boards</b>				
Accountancy Board		122.1		\$ 14,539.80
Animal Health Board		5.2		\$ 480.10
Architecture Board		190.3		\$ 23,362.90
Assessors Board		131.9		\$ 16,223.70
Barber Board		18.6		\$ 2,287.80
Combative Sports Board		3.7		\$ 455.10
Client Security Board		112.0		\$ 13,457.00
Cosmetology Examiners Board		102.9		\$ 12,656.70
Crime Victims Reparations Board		229.5		\$ 26,826.00
Environmental Quality Board		226.1		\$ 27,810.30
Land Exchange Board		3.5		\$ 430.50
Peace Officers Standards and Training Board		57.3		\$ 6,800.40
Private Detective Board		131.5		\$ 16,174.50
School Administrators Board		151.5		\$ 18,634.50
State Arts Board		372.7		\$ 45,842.10
State Fair Board		3.7		\$ 455.10
State Investment Board		414.5		\$ 49,713.00
Teaching Board		977.7		\$ 120,257.10
Zoological Board		20.7		\$ 2,474.60
<b>SUBTOTAL</b>		<b>3,275.4</b>		<b>\$ 398,881.20</b>
<b>Health Boards/Offices</b>				
Behavioral Health & Therapy Board		196.8		\$ 24,206.40
Chiropractic Board		1,835.9		\$ 174,786.70
Dentistry Board		3,060.7		\$ 277,889.60
Dietetics & Nutrition Practice Board		19.5		\$ 2,024.50
Emergency Medical Services Regulatory Board		407.4		\$ 49,527.20
Health Professionals Services Program		19.4		\$ 2,386.20
Licensed Drug & Alcohol Counselor Program		792.6		\$ 65,661.30
Marriage & Family Therapy Board		643.6		\$ 56,062.80
Nursing Board		4,719.3		\$ 521,882.40
Nursing Home Administrators Board		18.6		\$ 2,287.80
Optometry Board		83.5		\$ 7,801.00
Pharmacy Board		657.8		\$ 66,675.40
Physical Therapy Board		527.2		\$ 51,590.60
Podiatry Board		221.6		\$ 22,653.30
Psychology Board		2,051.4		\$ 180,415.20
Social Work Board		1,554.3		\$ 130,123.40
Veterinary Medicine Board		844.6		\$ 71,391.80
<b>SUBTOTAL</b>		<b>17,654.2</b>		<b>\$ 1,707,365.60</b>
<b>Higher Education</b>				
Higher Education Facilities Authority		0.2		\$ 24.60
Higher Education Services Office		145.6		\$ 17,584.30
<b>SUBTOTAL</b>		<b>145.8</b>		<b>\$ 17,608.90</b>

APPENDIX A: SERVICE HOURS				
By Agency or Political Subdivision for FY 2013				
Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<b>Other Executive Branch Agencies</b>				
Administration Department		559.8	\$	56,183.40
Administrative Hearings Office		208.0	\$	25,441.00
Agriculture Department		518.8	\$	63,196.40
Black Minnesotans Council		28.3	\$	3,420.40
Campaign Finance Board		299.3	\$	36,406.90
Capitol Area Architectural Planning Board		28.3	\$	3,480.90
Center for Arts Education		70.5	\$	8,061.00
Chicano/Latino Peoples Affairs Council		8.3	\$	971.40
Commerce Department		7,876.0	\$	949,778.50
Corrections Department (3)		3,323.5	\$	395,057.00
Corrections Department/Community Notification		2,212.3	\$	216,144.90
Disability Council		0.4	\$	49.20
Employment & Economic Development Department		2,280.8	\$	215,352.40
Executive Council		5.3	\$	651.90
Explore Minnesota Tourism		10.0	\$	1,109.00
Faribault Academies		20.1	\$	2,461.30
Firefighter Training & Education Board		1.1	\$	135.30
Governor's Office		290.4	\$	35,719.20
Human Rights Department		101.3	\$	12,162.90
Judiciary Courts		1,085.8	\$	131,237.90
Labor and Industry Department		4,193.1	\$	515,421.30
Law Examiner's Board		321.3	\$	39,519.90
Lawyer's Professional Responsibility Board		76.3	\$	9,384.90
Legislature		165.3	\$	19,759.90
Legislature Auditor		107.7	\$	13,247.10
Mediation Services Bureau		71.2	\$	8,757.60
Military Affairs Department		60.8	\$	7,439.90
Minnesota Commission Serving Deaf & Hard of Hearing People		0.8	\$	98.40
Minnesota Management & Budget		576.5	\$	70,387.00
Minnesota Insurance Marketplace		48.6	\$	4,822.80
Office of Enterprise Technology		134.8	\$	10,678.90
Ombudsman for Mental Health & Developmental Disabilities		12.0	\$	1,344.00
Ombudsperson for Families		44.2	\$	5,436.60
Public Defender, Local		8.5	\$	1,045.50
Public Safety Department (3)		20,773.1	\$	2,240,788.30
Public Utilities Commission		2,838.9	\$	336,787.70
Revenue Department (3)		7,046.1	\$	864,772.80
Rural Finance Authority		33.8	\$	4,157.40
Secretary of State		1,901.6	\$	231,344.80
Sentencing Guidelines Commission		39.6	\$	4,700.30
State Auditor		15.0	\$	1,729.50
State Historical Society		22.8	\$	1,979.40
State Lottery		14.4	\$	1,463.20
Tax Court		1.5	\$	184.50
Veterans Affairs Department		195.1	\$	23,672.80
Veterans Homes Board		345.4	\$	41,659.20
Water & Soil Resources Board		201.4	\$	24,689.70
<b>SUBTOTAL</b>		<b>58,178.1</b>	<b>\$</b>	<b>6,642,294.30</b>

**APPENDIX A: SERVICE HOURS**  
**By Agency or Political Subdivision for FY 2013**

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<b>OTHER GOVERNMENT</b>				
Aitkin County Attorney		6.5	\$	662.00
Anoka County Attorney		1,773.1	\$	150,210.30
Becker County Attorney		1,627.3	\$	161,531.40
Beltrami County Attorney		86.7	\$	10,251.60
Benton County Attorney		582.9	\$	68,215.20
Big Stone County Attorney		629.9	\$	63,496.70
Blue Earth County Attorney		259.0	\$	31,169.50
Brown County Attorney		399.0	\$	37,774.50
Carlton County Attorney		53.3	\$	6,335.90
Carver County Attorney		86.9	\$	8,587.70
Cass County Attorney		730.8	\$	78,266.90
Chippewa County Attorney		795.6	\$	85,566.30
Chisago County Attorney		679.5	\$	75,455.00
Clay County Attorney		368.1	\$	45,248.80
Clearwater County Attorney		371.1	\$	45,436.30
Cook County Attorney		1.1	\$	80.30
Cottonwood County Attorney		574.6	\$	60,005.80
Crow Wing County Attorney		294.6	\$	31,417.80
Dakota County Attorney		312.5	\$	24,363.00
Dodge County Attorney		82.0	\$	10,086.00
Douglas County Attorney		337.9	\$	39,515.70
Freeborn County Attorney		83.4	\$	8,806.20
Goodhue County Attorney		234.8	\$	28,715.40
Hennepin County Attorney		6,096.0	\$	566,256.50
Houston County Attorney		16.0	\$	1,143.00
Hubbard County Attorney		15.5	\$	1,081.50
Isanti County Attorney		161.2	\$	19,492.10
Itasca County Attorney		461.1	\$	43,058.80
Jackson County Attorney		396.1	\$	48,720.30
Kanabec County Attorney		165.8	\$	16,075.90
Kandiyohi County Attorney		660.4	\$	75,305.70
Kittson County Attorney		2.2	\$	149.60
Koochiching County Attorney		1,314.9	\$	133,875.20
Lac qui Parle Attorney		20.4	\$	2,509.20
Lake County Attorney		14.6	\$	1,795.80
Lake of the Woods County Attorney		6.5	\$	717.00
Le Sueur County Attorney		28.1	\$	3,126.30
Lyon County Attorney		337.8	\$	41,549.40
Mahnomen County Attorney		348.0	\$	42,804.00
Marshall County Attorney		5.0	\$	521.50
Martin County Attorney		122.5	\$	14,957.50
Meeker County Attorney		157.7	\$	19,232.10
Misc Local Assistance		2,167.4	\$	237,682.20
Mille Lacs County Attorney		615.5	\$	75,046.50
Morrison County Attorney		983.1	\$	101,605.30
Mower County Attorney		541.8	\$	51,263.40
Murray County Attorney		29.0	\$	2,054.50
Nicollet County Attorney		177.3	\$	21,763.90
Nobles County Attorney		808.1	\$	76,477.80
Norman County Attorney		784.4	\$	77,973.70
Olmsted County Attorney		1.4	\$	95.20
Otter Tail County Attorney		390.9	\$	40,705.20
Pennington County Attorney		774.1	\$	72,031.80
Pine County Attorney		354.5	\$	36,921.00
Pipestone County Attorney		21.6	\$	2,464.30
Polk County Attorney		120.9	\$	11,873.20
Pope County Attorney		60.5	\$	7,029.00
Ramsey County Attorney		2,932.1	\$	274,661.30
Redwood County Attorney		319.9	\$	32,555.20
Renville County Attorney		73.9	\$	8,924.70
Rice County Attorney		631.1	\$	67,741.80
Rock County Attorney		47.5	\$	5,842.50
Roseau County Attorney		664.9	\$	68,527.70
Scott County Attorney		246.0	\$	25,093.50
Sherburne County Attorney		849.9	\$	83,362.70
Sibley County Attorney		131.5	\$	15,817.00
St. Louis County Attorney		1,734.6	\$	188,165.80
Stearns County Attorney		780.7	\$	95,514.60
Steele County Attorney		60.1	\$	7,067.80
Stevens County Attorney		554.2	\$	51,391.60
Swift County Attorney		22.4	\$	2,590.20
Todd County Attorney		93.9	\$	11,549.70



**APPENDIX A: SERVICE HOURS**  
**By Agency or Political Subdivision for FY 2013**

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
Wabasha County Attorney		51.6	\$	3,690.30
Waseca County Attorney		142.2	\$	17,430.10
Washington County Attorney		111.4	\$	9,247.20
Watsonwan County Attorney		211.0	\$	25,870.50
Wilken County Attorney		176.6	\$	21,611.80
Winona County Attorney		30.2	\$	3,247.10
Wright County Attorney		199.6	\$	22,598.30
Yellow Medicine County Attorney		78.2	\$	5,999.60
Association of County Attorneys		46.3	\$	5,694.90
Various Local Governments		750.9	\$	88,934.20
<b>SUBTOTAL</b>		<b>39,471.6</b>	<b>\$</b>	<b>4,061,686.80</b>
<b>TOTAL NON-PARTNER AGENCIES SUBDIVISIONS</b>		<b>118,725.1</b>	<b>\$</b>	<b>12,827,836.80</b>
<b>TOTAL PARTNER/SEMI-PARTNER AGENCIES (from page A-1)</b>		<b>82,237.7</b>	<b>\$</b>	<b>9,728,081.10</b>
<b>TOTAL NON-PARTNER AGENCIES SUBDIVISIONS</b>		<b>118,725.1</b>	<b>\$</b>	<b>12,827,836.80</b>
<b>GRAND TOTAL HOURS/EXPENDITURES</b>		<b>200,962.8</b>	<b>\$</b>	<b>22,555,917.90</b>

**Notes:**

(1) The projected hours of service were agreed upon mutually by the partner agencies and the AGO. Actual hours may reflect a different mix of attorney and legal assistant hours than projected originally.

(2) Billing rates: Attorney \$123.00 and Legal Assistant \$68.00

(3) A number of agencies signed agreements for a portion of their legal services.

**APPENDIX B: SPECIAL ATTORNEY EXPENDITURES  
FOR FY 2013, BY AGENCY**

<b>AGENCY</b>	<b>Amount</b>
Administration	\$ 697,123.78
Labor and Industry	\$ 15,843.33
Minnesota Management & Budget	\$ 74,928.08
MnDOT	\$ 22,867.19
MnSCU	\$ 16,622.13
Public Safety	\$ 1,024.00
Revenue	\$ 7,708.36
<b>TOTAL</b>	<b>\$ 836,116.87</b>

<b>APPENDIX B: SPECIAL ATTORNEY EXPENDITURES</b>	
<b>BOND COUNSEL FOR FY 2013, BY AGENCY</b>	
<b>AGENCY</b>	<b>Amount</b>
Agricultural and Economic Development Board	\$ 8,778.00
Employment and Economic Development	\$ 18,860.09
Higher Education Facilities Authority	\$ 206,070.35
Higher Education Services Office	\$ 70,120.90
Housing Finance Agency	\$ 270,898.55
Minnesota Management & Budget	\$ 313,285.54
MnSCU	\$ 9,067.17
Rural Finance Authority	\$ 2,142.00
<b>TOTAL</b>	<b>\$ 899,222.60</b>
NOTE: Certain bond fund counsel are paid from proceeds.	