



The Office of
Minnesota Attorney General Keith Ellison
helping people afford their lives and live with dignity and respect • www.ag.state.mn.us

October 13, 2023

Representative Liz Olson, Chair
House Ways and Means Committee
Minnesota House of Representatives
479 State Office Building
St. Paul, MN 55155

Senator John Marty, Chair
Senate Finance Committee
Minnesota Senate
95 University Avenue W.
Minnesota Senate Bldg., Room 3235
St. Paul, MN 55155

Dear Chairs Olson and Marty:

I submit to you the annual expenditure report of the Office of the Attorney General for FY 2023, as required under Minnesota Statutes § 8.15, subd. 4.

I am pleased to report that 23 of the 26 new legal staff in the Attorney General's Office for which the legislature provided funding in 2023 have been hired at the time of the writing of this report, and the final three will be hired before the end of this October. These new attorneys and legal assistants will provide needed additional capacity to better meet the needs of Minnesotans we serve through our criminal, charities, wage theft, post-conviction, antitrust, civil rights, and restitution legal work.

Role of the Office of the Attorney General

The Attorney General is a statewide elected position created by Article V of the Minnesota Constitution. The role of the Office of the Attorney General is to:

- 1) Defend the duly enacted laws of the State of Minnesota;
- 2) Represent nearly all the State's agencies, boards, and commissions — more than 100 in total — in legal matters;
- 3) Assist Minnesota's county attorneys in criminal cases and appeals, and lead criminal prosecution of Medicaid Fraud; and
- 4) Protect Minnesotans from fraud and abuse, as authorized by many State statutes, most notably Minn. Stat. § 8.31: "The attorney general shall investigate violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade."

This report contains many representative examples of the work the Office has done in FY 2023 and continues to do on major current and future legal issues to fulfill each of the roles above. Some are already well known to the Legislature and the public, but many are not. All of

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them meet the constitutional, statutory, and regulatory duties of the Office, as well as its obligation to protect Minnesotans.

Organization of the Office of the Attorney General

The Office of the Attorney General helps the people of Minnesota afford their lives and live with dignity, safety, and respect. The Office consists of four large legal sections, each led by one of our Deputy Attorneys General or the Solicitor General. Within each Section are smaller Divisions organized around subject matter and client agencies.

The Deputy Attorneys General and Solicitor General report to the Chief Deputy Attorney General and Attorney General. The Attorney General is the Chief Legal Officer of the State of Minnesota and reports to the people of Minnesota.

About this report

It would be nearly impossible to list in this report every area of work and every accomplishment of the Office of the Attorney General in FY 2023. For this reason, in this report we provide representative examples of its work rather than a long list of case names. If you do not see directly reflected in this report any cases or bodies of work that interest or concern you, please let me know and I will be happy to brief you.

It continues to be my honor to serve the people of Minnesota as your Attorney General. During my tenure, I have valued open communication and transparency with all members of the Legislature. My door continues to be open to you and the members of your committees and the houses in which you serve.

Sincerely,



KEITH ELLISON
Attorney General

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

ANNUAL REPORT REQUIRED BY

**Minnesota Statutes section 8.15
subdivision 4 (2022)**

Fiscal Year 2023

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CONSUMER PROTECTION SECTION

CHARITIES DIVISION

2023 LEGISLATIVE CHANGE UPDATE

The Legislature funded 5 new full-time employees for the Charities Division in FY2023, three attorneys two legal assistants. All three new attorney positions have been filled. Two legal assistant positions will be filled by the end of October 2023. With these additional resources, the Charities Division will prioritize identifying, initiating, and completing more investigations, as well as reviewing and investigating healthcare transactions under the new Health Care Entity Transactions Law, Minn. Stat. ch. 145D.

DIVISION OVERVIEW

The Charities Division serves a number of functions. First, it maintains a public registry of charities, charitable trusts, and professional fundraisers that operate in the State. Second, it oversees and regulates charities, charitable trusts, and nonprofits active in Minnesota. Third, it enforces state charitable solicitation, charitable trust, and nonprofit laws. The Division's enforcement authority is civil, not criminal.

With respect to the Division's registration function, Minnesota law requires charitable trusts, charitable organizations, and professional fundraisers to register and file annual reports with the Attorney General's Office ("AGO"). In the last fiscal year, the Division deposited \$815,000 in registration-related fees into the State's general fund. The Division currently has more than 13,000 soliciting charitable organizations, more than 2,400 charitable trusts, and more than 300 professional fundraisers registered, which include both Minnesota and out-of-state entities. These entities collectively held more than \$906 billion in assets and had more than \$410 billion in total revenue last year. Registration information on the Attorney General's website permits the donating public to review a charitable organization's financial information. The Charities Division continues to develop a new registration and reporting system that will enable even greater transparency and more informed giving.

With respect to its oversight role, the Charities Division reviews for compliance multiple filings and notices concerning charities, charitable trusts, and nonprofits. For charitable trusts, the Division receives notice of certain trust and estate actions so it can act to protect charitable beneficiaries that might otherwise be unable to represent themselves. The Division received notice of dozens of such matters in FY 2023. For nonprofits, the Division receives statutory notice when a corporation seeks to dissolve, merge, or otherwise change its status, so it can ensure that assets are used for nonprofit purposes. The Division received and reviewed 230 such notices last fiscal year. The Charities Division also assists with the review of notices sent to the Office pursuant to the new Health Care Entity Transactions Law, Minn. Stat. ch. 145D. The AGO received 5 such notices since the law's enactment this year. For charities and professional fundraisers, the Division reviews numerous tax returns, financial statements, and other registration documents for financial misuse, solicitation fraud, and other violations.

For its enforcement role, the Charities Division conducts informal and formal civil investigations into complaints and other allegations of fraud, misuse of funds, breaches of fiduciary duties, and other wrongdoing by regulated entities. Depending on the circumstances, investigations are resolved through a spectrum of remedies, from formal enforcement actions to voluntary education and compliance efforts. Through the enforcement of laws governing nonprofit and charitable organizations, the Charities 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. At the same time, the Division works proactively with donors, charities, and nonprofit boards to provide education, outreach, technical assistance, and other support to strengthen the charitable-giving sector and help prevent future violations.

Below is a *representative sample of some but not all* legal work performed by the Charities Division in FY 2023.

- ***In re Fairview/Sanford Merger.*** In November of 2022, Sanford Health and Fairview Health Services announced that they intended to merge in 2023. Fairview Health Services is based in Minneapolis and has approximately 31,000 employees and 11 hospitals, mostly in the Twin Cities, owns the University of Minnesota Medical Center, and has a partnership with the University of Minnesota Medical School and the University of Minnesota Physicians Group. Sanford Health is a North Dakota corporation based out of Sioux Falls, South Dakota and has 47 medical centers with approximately 45,000 employees. The Charities Division jointly with the Antitrust Division initiated investigations into the merger and related issues. As part of its review of the proposed transaction, the Attorney General hosted a series of community meetings to directly gather feedback. In July 2023, Fairview announced its intent to terminate the merger discussions during the investigation. The investigation was one component of the Office's current prioritization of health care issues, including providing legislative input on health care transactions and charity care, and conducting investigations and seeking community input into fair billing, termination of care, and hospital agreement requirements.
- ***State v. ThinkTechAct Foundation.*** In January 2023, the Charities Division filed a lawsuit against Minnesota nonprofit ThinkTechAct Foundation and numerous insiders alleging they ran a sham nonprofit, misused nonprofit funds, and violated numerous other governance requirements under Minnesota charities laws. The complaint accuses the individual directors, who were indicted on charges related to the federal child-nutrition funds, of pocketing sizable nonprofit assets obtained through the federal child-nutrition program. The complaint also accuses ThinkTechAct of failing to comply with numerous governance requirements for nonprofits, register with the Attorney General's Office, file required annual reports on its activities, and cooperate with the Office's investigation. Through the lawsuit, the Charities Division successfully dissolved ThinkTechAct, and will seek to impose civil penalties and prevent the individual defendants from serving as officers or directors of any nonprofit or charitable corporation in Minnesota in the future. The complaint was brought pursuant to a number of matters involving the creation of

sham nonprofits to perpetuate Federal Child Nutrition Program fraud, which is a current priority for the Charities Division.

- ***In re MedCon Wellness.*** In June 2023, the AGO filed an Assurance of Discontinuance that prohibits a Minnesota-based wellness physician and his practice from soliciting contributions for a charity that did not exist, falsely claiming on his web site that fees paid to his clinic benefited charity and were tax-deductible, and other misleading statements on his website. Despite contrary representations, the physician never created any nonprofit and provided consultations through MedCon Wellness, which is not tax-exempt or eligible for tax deductions. The physician also promised to donate all his professional fees to charity if a customer was not satisfied, but never made any such donations. The Assurance requires the physician to cease the violative conduct and holds him accountable for \$25,000 for each occurrence if he violates the Assurance in the future.

CONSUMER ACTION DIVISION

The Consumer Action Division serves two primary functions. First, it answers calls, correspondence, and on-line complaints from people, businesses, and other organizations who contact the Office. Division staff are often able to answer questions and provide information over the phone, talk through consumer-related problems, and assist people in locating other government agencies that may be able to help address their concerns. Some of the consumer topics people most commonly call about include health care, housing, credit reports, utilities, and transportation. The Division also answered calls on high-profile state, national, and international issues, as well as calls with concerns about implementation of COVID-19 related programs like RentHelp, Homehelp, etc., frontline worker pay, and many other issues.

Second, the Consumer Action Division helps Minnesota residents informally mediate and resolve thousands of complaints with businesses and other organizations each year. The Division handled more than 15,000 files and arrived at settlements of more than \$9.1 million for Minnesota consumers. The Division also assisted our wage theft unit with cases involving Spanish speakers, assisted with investigations into solar providers, reviewed thousands of documents related to housing lawsuits, and participated in multiple consumer protection lawsuits by taking affidavits and doing other legal assistance work. Through its efforts to assist Minnesotans in these matters, the Division regularly eliminated the need for costly and time-consuming litigation for all parties.

Below is a ***representative sample of some but not all*** work performed by the Consumer Action Division in FY 2023.

- An individual reached out to the Office after her child died during delivery, and she was given a bill for more than \$24,000 by the hospital. The Office contacted the hospital and the insurance company and was able to reduce the amount owed by more than \$23,000.

- An elderly woman contacted this Office after she had paid a door-to-door, high-pressure salesman \$3,500 to rake the snow off her roof. We acted immediately and made a call, and the salesman immediately provided a refund of \$3,000.
- The Division was contacted by the father of a young woman who was badly injured in a car accident, including suffering a life-altering brain injury. Her doctors believed that she could benefit from treatment at a specific brain trauma institute, but the insurance company would not provide coverage, and instead wanted to send her to a local nursing home. The Office contacted the insurance company, and in less than one week they approved coverage for the young woman's treatment.
- An individual contacted us after she purchased a used vehicle that had issues from day one. The vehicle was not functioning, and she had significant expenses for rentals and rideshares that she needed to use for work. This Office secured a full refund of the purchase price of the vehicle, and reimbursement for the consumer's rental and rideshare costs, totaling more than \$20,000.
- An individual contacted the Division about required, life-saving surgery that she needed. The original provider would not perform the surgery due to issues with insurance, and referred the consumer to a provider that accepted her insurance. The procedure was pushed out three months, which, according to the consumer, could result in her death. We contacted the original provider and the insurance company and came to an agreement, allowing the consumer to immediately receive her life-saving surgery.
- An individual reached out regarding a sheriff's sale scheduled for her home in less than one month. She had applied for HomeHelp funds and was likely going to qualify, but the law firm refused her requests to delay the sheriff's sale. We contacted the law firm, who agreed to postpone the sheriff's sale, allowing the funds to go through, and for the individual to become current on their mortgage. Without our intervention, the funds would have been rejected, and the individual may have lost their home.

CONSUMER, WAGE, AND ANTITRUST DIVISION

2023 LEGISLATIVE CHANGE UPDATE

In addition to the enactment of new substantive laws (discussed below) that the Division will enforce, the Legislature provided additional resources to the Office to hire additional full time-employees in the Division. For example, the Consumer Protection Section received funding for an attorney to focus on restitution processes that result from the State's lawsuits, as well as collection of judgments, and bankruptcy matters, and that position has been filled. Updates on additional staffing hires appear at the beginning of each division's report below.

DIVISION OVERVIEW

The Consumer, Wage, and Antitrust Division investigates violations of and enforces state laws, including Minnesota’s laws prohibiting consumer fraud, deceptive trade practices, false advertising, and wage theft. The Division also investigates potential violations of state and federal antitrust laws and enforces these laws when it uncovers evidence of anticompetitive conduct.

The Division conducts investigations and acts where appropriate to stop and deter fraud, anticompetitive conduct, and other unlawful practices in business, commerce, or trade and to protect consumers and workers. The Division also participates in numerous coordinated investigations of potential fraudulent or anticompetitive conduct by multiple state and federal enforcers of consumer protection, worker protection, and antitrust laws, including other state attorneys general, the U.S. Department of Justice, and the Federal Trade Commission (“FTC”) and the Consumer Financial Protection Bureau (“CFPB”).

Below is a *representative sample of some but not all* investigations and lawsuits brought or resolved by the Consumer, Wage, and Antitrust Division in FY 2023.

CONSUMER PROTECTION

2023 LEGISLATIVE CHANGE UPDATE

As a result of the 2023 Legislative session, the Division will now be able—like its counterparts in 45 other states and the District of Columbia—to investigate and bring consumer protection enforcement actions for unfair and unconscionable acts and practices. The Division will also focus on enforcing new consumer protection laws enacted by the Legislature including price-gouging of generic prescription drugs; the new 36% interest rate cap and anti-evasion prohibitions for payday loans, and the price-gouging prohibitions during times of emergency. The Office also advocated for legislation, passed by the Legislature, that devotes recoveries from the State’s litigation against Juul Labs, Inc. and Altria to a fund administered by the Department of Health for prevention and cessation of tobacco use by underage users.

PROTECTING PUBLIC SAFETY THROUGH ENFORCEMENT OF CIVIL CONSUMER PROTECTION LAWS

The Office continues to utilize its civil enforcement authority of consumer protection laws in areas that intersect with criminal matters to further public safety and abate public nuisances that threaten the health and safety of Minnesotans:

- ***State v. Fleet Farm LLC***. In October 2022, the Office filed suit against Fleet Farm related to its sale of firearms to straw purchasers—individuals that buy firearms for people ineligible to buy or possess guns. The suit alleges that Fleet Farm sold at least 37 guns to two straw purchasers, including one of the guns used in the Truck Park shooting in St. Paul in 2021. The Office claims that Fleet Farm is liable for its carelessness and

failure to follow state and federal laws pertaining to firearm sales. In the lawsuit, the Office asks for injunctive relief, including strengthened oversight of Fleet Farm's operations and increased training to prevent sales of guns to straw purchasers, as well as monetary relief, including disgorgement of Fleet Farm's profits from sales to straw purchasers. After removal to federal court and a decision denying Fleet Farm's motion to dismiss the case, litigation is ongoing.

- **Public Nuisance Maintained by Merwin Liquors and Winner Gas Station.** After receiving reports of significant violence and criminal activity taking place on the premises of two businesses at North Lyndale Avenue and West Broadway in Minneapolis—Merwin Liquors and Winner Gas Station—the Office worked with the City of Minneapolis and Hennepin County to investigate the entities for supporting a public nuisance. Shortly after notifying the companies that they were maintaining a public nuisance on their properties and would face imminent legal action unless the nuisance activity was abated, Merwin sold the management of its store to another entity and both Winner and the new Merwin manager took steps to reduce nuisance activity on their properties. As a result, criminal activity and calls for service in the area dramatically decreased. The Office resolved to continue monitoring the situation with Minneapolis and Hennepin County to ensure the public health and safety of the community.
- **Investigation of Kia and Hyundai's Sale of Vehicles that Lack Industry-Standard, Anti-Theft Technology.** In March 2023, the Office launched an investigation into Kia and Hyundai's sale of vehicles to Minnesota consumers that lacked industry-standard, anti-theft "engine immobilizer" technology. Kia and Hyundai's failure to equip their vehicles with this anti-theft technology has made their vehicles sitting ducks for car thieves, with reported thefts of Kia and Hyundai vehicles increasing by 836% in Minneapolis and 611% in St. Paul in 2022, as compared to 2021. The Office is investigating whether Kia and Hyundai's conduct violates Minnesota's consumer protection and public nuisance laws. The investigation is ongoing.

FRAUDULENT MARKETING PRACTICES OF OPIOID MANUFACTURERS AND DISTRIBUTORS

The national opioid epidemic continues to ravage the nation, including in Minnesota where 978 Minnesotans died from opioid-related overdoses in 2021, a 44% increase from 2020. The actions the Office has taken against companies that caused this damage include but are not limited to:

- **Distributors and Johnson & Johnson Settlements.** In July 2022, the Office finalized settlement agreements with pharmaceutical distributors McKesson, Cardinal Health, and Amerisource Bergen, and opioid manufacturer Johnson & Johnson, which will result in over \$300 million flowing into the state over the next 17 years. The first payments from these settlements were distributed to Minnesota cities and counties in the fall of 2022. Pursuant to an agreement with cities and counties on allocation and distribution of the settlement funds, called the Minnesota Opioids State-Subdivision Memorandum of Agreement ("MOA"), 75% of the settlement payments will go directly to local units of

government, and 25% will be put into Minnesota's opioid abatement fund to be overseen by the Opioid Epidemic Response Advisory Council.

- **Teva and Allergan Settlements.** In December 2022, the Office announced it was joining multistate agreements in principle with major opioid manufacturers Teva Pharmaceuticals and Allergan. The final terms of the settlements have been reached and the settlements will be finalized and filed soon. Together, the settlements will result in \$79 million flowing into the state over the next 13 years.
- **Pharmacy Settlements.** In December 2022, the Office announced it was joining multistate agreements in principle with the three largest pharmacy chains in the United States, CVS, Walgreens, and Walmart, related to their conduct in handling opioid prescriptions. The final terms of the settlements have been reached and the settlements will be finalized and filed soon. Together, the settlements will result in \$164 million flowing into the state over the next 15 years.
- **Updating Minnesota's Opioid Legislation.** In 2019, the Office worked with the Minnesota Legislature to become one of the first state legislatures in the country to take decisive action in fighting the opioid crisis by passing landmark opioid response legislation that placed opioid-related monies into a separate, restricted opioid fund, and created the Minnesota Opioid Epidemic Response Advisory Council. During the 2022 legislative session, the Office worked with state and local stakeholders and the Legislature to pass new legislation to accommodate the MOA and the settlements. The 2022 legislation allows direct payments of settlement proceeds to cities and counties, enables the immediate transfer of settlement funds into the state opioid response fund, and implements reporting requirements for Minnesota subdivisions. Finally, to ensure that Minnesota would receive the maximum level of payment from the Distributors and Johnson & Johnson settlements, the 2022 legislation bars opioid-related claims by Minnesota subdivisions against the Distributors and Johnson & Johnson ("claims bar"). During the 2023 legislative session, the Office worked with stakeholders and the Legislature to update the "claims bar" to account for the new opioid settlements.
- ***State of Minnesota v. Purdue Pharma L.P., et al.*** In July 2018, the Office filed suit against OxyContin manufacturer Purdue Pharma, alleging that Purdue misrepresented the risks of opioid addiction and the benefits of long-term opioid use. In August 2019, the Office filed an amended complaint adding members of the Sackler family, the owners of Purdue Pharma, as co-defendants. Purdue filed for bankruptcy in September 2019, which eventually led to a 2021 multistate settlement with Purdue and the Sackler family for payments of up to \$6 billion over 10 years. Minnesota's share of those payments is expected to exceed \$50 million. The settlement also provides for unprecedented public disclosure of more than 30 million documents, including attorney-client privileged documents. The settlement agreement is currently on hold, pending resolution of appeals involving Purdue's bankruptcy plan. In August 2023, the U.S. Supreme Court agreed to review Purdue's bankruptcy plan, with oral argument scheduled for December 2023.

PROTECTING THE RIGHTS OF RESIDENTIAL TENANTS AND STUDENTS

The Office continues investigating violations of the consumer-protection laws in the residential rental marketplace and with respect to higher education and student loans.

- ***State of Minnesota v. Schierholz and Associates, Inc. d/b/a Broadmoor Valley.*** In April 2022, the Office filed an Amended Complaint alleging that Schierholz and Associates, Inc. (“S&A”) and its owner, Paul Schierholz, failed to maintain the Broadmoor Valley manufactured home park in Marshall and its roads to the standards required by Minnesota law. The complaint also alleges that S&A inserted misleading and deceptive provisions in its leases, residents were charged late fees above the legal limit and other fees prohibited by law, and S&A retaliated against residents and interfered with the resident association’s protected right to freedom of expression within the park. As part of the lawsuit, the Office is seeking, among other things, to permanently stop the defendants’ deceptive conduct, illegal fees, and retaliatory acts, obtain monetary relief for residents who were charged illegal fees, and to abate the substandard conditions of the park and its roads. The Office is currently pursuing newly discovered claims, including the defendants’ unlawful dissipation of residents’ security deposits and failure to maintain an infrastructure reserve fund as required by state law. In January 2023, S&A filed Chapter 11 bankruptcy. The Office obtained a court order excepting its state court action from the automatic stay, and litigation in this matter is ongoing.
- **Student Loan Advocacy and Litigation.** The Office has secured substantial relief for students. For example, in January 2022, the Office resolved its investigation against student loan servicer Navient that provided \$14 million in relief to Minnesota borrowers. The settlement resolved allegations of widespread unfair and deceptive student loan servicing practices and abuses in originating predatory student loans. In August 2022, the Office secured \$26.3 million in federal student debt relief for Minnesota borrowers who attended the now-defunct ITT Technical Institute between 2005 and its 2016 closure. This relief came in response to an investigation by the Office and other states that uncovered widespread fraud by ITT, as well as the Office’s advocacy before the U.S. Department of Education. The Office also shut down and secured refunds for Minnesota student-borrowers who fell victims to several student debt relief scams, including the following: \$15,325 in October 2022, \$50,000 in November 2022, \$1,072,643 in December 2022, and \$20,063 in February 2023. Finally, a representative of the Office was the lead negotiator on behalf of state attorneys general in federal rulemaking sessions in 2022 to enhance accountability and oversight of schools receiving federal student aid.

PROTECTING CONSUMERS FROM FRAUDULENT AND DECEPTIVE MARKETING AND DOOR-TO-DOOR SALES

The Division has and continues to investigate and take action against companies engaged in deceptive marketing practices and unlawful or deceptive practices.

- ***State v. Juul Labs & Altria Group.*** The Office filed a lawsuit in 2019 alleging that Juul Labs violated consumer-protection laws and created a public nuisance by deceptively marketing highly addictive e-cigarette products to youth. The Office added Juul investor Altria Group to the lawsuit in early 2020. Following three weeks of trial in March and April 2023, the defendants settled the lawsuit just before closing arguments by agreeing to various restrictions to prevent youth sales, payment of \$60.5 million to the State, and to allow for full disclosure of company documents related to youth marketing and the litigation.
- ***State v. Wall & Associates et al.*** The Office filed a lawsuit against Wall & Associates, a tax debt settlement company that advertises as a local company that can reduce a taxpayer's debt by 90%, that it can assist taxpayers with unfiled tax returns and employs tax attorneys—none of which is true. The Office amended its Complaint and added the company's owner and CEO as named defendants due to their direction and participation in these fraudulent practices. The case is currently set for trial in January 2024.
- ***State v. Brio Energy LLC et al.*** The Office filed a lawsuit in 2022 against four Utah-based solar-panel sales companies, three company executives, and loan providers working with the companies for engaging in deceptive and fraudulent practices in marketing and selling residential solar panel systems. The Office resolved the litigation in May 2023, banning the sales companies from further activity in Minnesota and recovering \$310,000 for consumer restitution from the various parties.
- ***State v. Avid Telecom, et al.*** This Office filed a multistate lawsuit in Arizona federal court in May 2023 against telecommunications company Michael D Lansky, LLC, d/b/a Avid Telecom; its owner, Michael Lansky; and its vice president, Stacy Reeves, for knowingly and negligently selling access to U.S.-based telephone numbers to known scammers and scam robocallers. Litigation and settlement discussions in this action are ongoing.
- ***State v. MN Crete Pools, LLC and Charles Workman.*** In August 2022, this Office filed suit against pool contractor MN Crete Pools, LLC and its owner, Charles Workman for defrauding at least 20 families out of tens of thousands of dollars each by promising to build them an in-ground pool and never delivering. In January 2023, this Office obtained a default judgment against the defendants for \$2.2 million, including restitution, civil penalties, court costs, and the Office's attorneys' fees, as well as injunctive relief permanently barring them from residential construction in Minnesota. Since obtaining judgment, the State has obtained loan forgiveness from banks on behalf of multiple families who took out significant loans to pay defendants. The Office continues to pursue loan forgiveness for other families as well as collection of judgment against the defendants.

WAGE THEFT UNIT

2023 LEGISLATIVE CHANGE UPDATE

As a result of the 2023 Legislative session, the Office received funding to double the size of the Wage Theft Unit: two additional attorneys and one additional investigator have now been hired. These resources will allow the Unit to undertake more investigations and enforcement actions in the coming fiscal year. Such investigations and enforcement actions will continue to be focused on protecting low wage Minnesota workers in numerous industries from unlawful labor and wage practices, including enforcement of newly enacted worker protections such as the Safe Workplaces for Meat and Poultry Processing Workers Act, 2023 Minn. Laws Chap. 53, Art. 5; and the ban on non-compete clauses in employment contracts, 2023 Minn. Laws Chap. 53, Art. 6.

UNIT OVERVIEW

The Minnesota Attorney General's Office Wage Theft Unit was created in June 2019. The Wage Theft Unit's goal is to protect and advance the economic rights of all Minnesotans by investigating and litigating cases involving unlawful patterns and practices affecting economic rights, and other persistent issues that cause workers in Minnesota not to receive the wages they have earned. The Unit monitors emerging labor and employment issues and engages in dialogue with other governmental entities, community groups, labor, and the business community to increase awareness of economic-rights issues and to identify unlawful practices. The Unit is deepening partnerships with local, state, and federal agencies to strategically enforce the law to achieve maximum compliance. In doing so, the Unit benefits both workers whose rights have been violated and employers who respect workers and follow the law. The Unit is engaged in numerous non-public investigations related to violations of Minnesota's wage and hour laws. These non-public investigations include issues related to worker misclassification, nonpayment of overtime, and failure to pay the applicable state and local minimum wage. The Unit's work also includes the following public matters:

- ***State by Ellison v. Shipt, Inc.*** In October 2022, the Unit filed suit against Shipt, Inc., alleging that Shipt misclassified its workers as independent contractors and failed to pay them the appropriate wages and benefits that are owed employees under Minnesota and local laws. The lawsuit alleges that by misclassifying its workers—known as “Shoppers”—Shipt has deprived thousands of Shoppers in Minnesota of state and local minimum-wage protections, local sick- and safe-time protections, overtime protections, and state law protections that guarantee employees know with certainty what they will be paid for the work they perform. Shipt's worker misclassification also prevents misclassified employees from accessing state unemployment insurance and workers' compensation benefits. The lawsuit asks the Court to order Shipt to cease misclassifying its workers. The State is also demanding significant monetary relief from Shipt, including restitution and civil penalties. Litigation in this matter is ongoing.

- ***State by Ellison v. Property Maintenance & Construction, Inc. et al.*** The Unit recently settled its litigation against Property Maintenance & Construction, Inc., Property Maintenance & Construction, LLC, and Leopoldo Pimentel, Jr. (“PMC”) for allegedly hindering, delaying, and obstructing a Minnesota Department of Labor and Industry (“DLI”) investigation into its wage payment practices. The Unit interviewed numerous PMC workers in June 2022. The workers expressed fear of PMC and its owner, Pimentel, and reported to Unit staff that they had been discouraged from cooperating with DLI’s investigation, told to provide false information, and that PMC blamed decreased hours on workers who cooperated with DLI’s investigation. DLI separately informed the Unit that PMC had refused to provide DLI with documentation related to its work and worker pay, hindering and delaying its investigation. The settlement prohibits PMC from engaging in any future obstruction of DLI investigations, provides for the AGO to meet with workers and educate them about their rights, requires PMC to provide supplemental information to DLI, and pay a \$7,500 penalty.
- ***In the Matter of Madison Equities et al.*** After receiving reports of failure to pay overtime from numerous security guard hourly workers, the Unit launched an investigation into Madison Equities, a property management company that has significant property holdings in St. Paul through a number of subsidiaries. Madison Equities refused to produce responsive information and the Unit moved to compel compliance in district court. After lengthy litigation, the Unit prevailed before the Minnesota Supreme Court and secured an opinion reaffirming the Attorney General’s broad investigative authority. Subsequently, Madison Equities produced relevant information about its overtime payment practices. After completing its investigation, in June 2023, the Unit filed a lawsuit against Madison Equities alleging that the company used its subsidiaries to avoid paying workers the overtime wages they are owed. Litigation is ongoing.

OUTREACH

The Unit's work also includes educational outreach to Minnesotans around the state and collaboration with stakeholders on important public policy issues. For example, the Unit participated in a state Labor Trafficking Protocol Task Force. The Task Force developed educational and instructional protocol to educate law enforcement and victim advocate groups on the issue of labor trafficking. In collaboration with the Bureau of Criminal Apprehension and other stakeholders, the Unit has participated in law enforcement trainings around the state, including in Mankato, Chisago City, and Grand Rapids. The Unit has also performed outreach with various communities within Minnesota to educate them on their employment rights. These outreach meetings have often been in conjunction with grassroots nonprofit organizations with whom the Unit has developed relationships. The Unit has also educated employer stakeholders on wage issues, including at the Building Trades & Construction Council annual meeting and at the Upper Midwest Employment Law Institute.

ANTITRUST ENFORCEMENT TEAM

2023 LEGISLATIVE CHANGE UPDATE

As a result of the 2023 Legislative session, the Office received funding for two additional antitrust attorneys, increasing the size of the Office's antitrust enforcement team from four attorneys to six. One position has been filled and the second will be hired in October. These additional attorneys will allow the antitrust enforcement team to undertake more investigations and enforcement actions in the coming fiscal year. Such investigations and enforcement actions will continue to be focused on enforcement in industries important to Minnesota including agriculture, healthcare, and technology, among others, including enforcement of the newly enacted law requiring pre-merger notification of certain healthcare transactions, and the Digital Fair Repair Act.

- **In the Matter of the Proposed Merger of Sanford Health and Fairview Health Services.** On November 16, 2022, Sanford Health and Fairview Health Services announced their intent to merge. The antitrust enforcement team, together with the Charities Division, investigated whether the proposed merger would violate state and federal antitrust or charities laws. As part of that review, the Attorney General's Office gathered community input through four well-attended community meetings hosted throughout the state, over 6,000 community input forms online, and hundreds of phone calls. The investigation involved discovery of relevant information from both the parties and third parties. On July 27, 2023, Fairview and Sanford announced that they were discontinuing the merger process.
- **Health Care Entity Transaction Law.** On May 26, 2023, Governor Walz signed into law specific reporting requirements for certain health care entity transactions. These requirements took effect May 26, 2023. The antitrust enforcement team is responsible for oversight of for-profit health care transactions and has joint responsibility for oversight of non-profit health care transactions with the charities division, all in consultation with the Minnesota Department of Health. Proposed health care transactions that meet the threshold requirements must submit certain information to the Attorney General's Office at least 60 days before the transaction closes. If the Attorney General finds that the proposed transaction does not comply with the charities, antitrust, or public interest standards outlined in the law, the Attorney General may bring a lawsuit to seek to stop the transaction. Since the new law went into effect, the Office has been actively engaged in reviewing and assessing proposed transactions under the law.
- **Pesticides Lawsuit: Syngenta and Corteva Unlawful Suppression of Competition.** On September 29, 2022, Minnesota joined the FTC and 9 other states in bringing an antitrust lawsuit against Syngenta and Corteva in the United States District Court for the Middle District of North Carolina. The lawsuit alleges that Syngenta and Corteva used "loyalty programs" for their branded pesticide products in order to suppress competition from generic pesticide manufacturers. Minnesota seeks injunctive and monetary equitable relief, including disgorgement of defendants' ill-gotten profits on behalf of Minnesota farmers. Defendants filed Motions to Dismiss on December 12, 2022.

Plaintiffs filed an amended complaint on December 23, 2022, adding two additional states and including additional allegations of wrongdoing. Defendants moved to dismiss the amended complaint, and those motions are still pending.

- **Generic Drug Price Manufacturers Lawsuit.** Minnesota and a coalition of states and territories brought three complaints in federal court against numerous generic-drug manufacturers and executives. The first complaint is against 18 pharmaceutical companies and two individuals. Two former executives from Heritage Pharmaceuticals entered into settlement agreements and are cooperating with the attorneys general in that case. The second complaint is against 20 pharmaceutical companies and 15 individuals. The third complaint was brought in June 2020 and is against 26 pharmaceutical companies and 10 individuals. All three complaints allege that the defendants violated state and federal antitrust laws by conspiring to fix prices and allocate markets for more than 180 generic drugs. The lawsuits seek injunctive relief, civil penalties, damages, and disgorgement. As part of this relief, the Office is seeking damages on behalf of four state agencies that paid higher prices as a result of the conspiracy. Litigation is ongoing. Fact discovery for the states' bellwether case closed October 2, 2023, and all summary judgment motion briefing on the states' bellwether case will be submitted by October 2024. The states are preparing for trial in this case.
- **Amgen and Horizon Merger Challenge and Proposed Settlement.** On June 22, 2023, Minnesota joined the Federal Trade Commission ("FTC") and five other states to enjoin pharmaceutical company Amgen from acquiring pharmaceutical company Horizon Therapeutics, alleging that the proposed merger would anticompetitively enable Amgen to leverage its large portfolio of blockbuster drugs to pressure insurance companies and pharmacy benefit managers into favoring certain of Horizon's drugs over competing drugs. On September 1, 2023, FTC announced a proposed consent order that would resolve the state and federal claims, clearing the path for the merger to proceed but requiring Amgen to comply with certain conditions and restrictions to preserve competition in the markets for Horizon's drugs. The combined company will be subject to monitoring for 15 years.
- **Google Lawsuits.** Minnesota has joined with a large coalition of attorneys general offices from across the country in filing lawsuits against Google. One lawsuit alleges anticompetitive conduct to maintain Google's monopolies in web search and related advertising. Another lawsuit, filed earlier this year, challenges Google's conduct with respect to a set of ad tech tools and exchanges that connect advertisers to websites where they want to display their ads. The search trial began on September 12 and is scheduled to end in mid-November; litigation in the other two cases is ongoing.
- **Amazon Lawsuit.** In September 2023, Minnesota, along with the Federal Trade Commission and a coalition of 16 other states, filed a complaint challenging various Amazon practices that maintain its customer-facing online superstore monopoly and its monopoly in the online marketplace services that it provides to third-party sellers. The lawsuit alleges that Amazon's actions allow it to stifle innovation and competition,

degrade quality for shoppers, overcharge sellers, and prevent rivals from fairly competing against Amazon. Litigation is on-going.

- **Suboxone “Product Hopping” Lawsuit.** Minnesota joined a group of 42 states in bringing an antitrust lawsuit against drug manufacturer Indivior for misconduct related to its blockbuster drug Suboxone, which is prescribed to treat opioid addiction. The lawsuit alleged that when Indivior’s patent exclusivity period for selling tablet-form Suboxone was expiring, Indivior shifted to manufacturing Suboxone in film-strip form, where it still had patent exclusivity. The states alleged Indivior concocted false claims about why film strips were safer than tablets and used these false safety concerns to convince the Food and Drug Administration (“FDA”) to delay allowing competitors to manufacture a generic, tablet form of Suboxone. This resulted in the suppression of generic competition and enabled Indivior to continue to charge very high prices for Suboxone long after its tablet-form exclusivity period expired. In June of this year, the states reached a settlement agreement with Indivior. Indivior agreed to pay \$102.5 million (of which Minnesota will receive \$1.7 million). Indivior also agreed to strong injunctive terms and ongoing monitoring provisions. Indivior can no longer engage in product-switching conduct. It also can no longer file citizen petitions with the FDA indicating that any drug is unsafe without first notifying the litigating states.

AGRICULTURAL AND FOOD INDUSTRY PRACTICES AND PRICING

The antitrust enforcement team continues to focus its resources on issues of particular importance to farmers, the agricultural and food sectors, and rural Minnesotans. Although details of many of the Division’s investigations remain confidential and non-public, the matters involve important aspects of the livestock and other protein production, food supply chain, and other agricultural and food products of importance in Minnesota. The antitrust enforcement team has also led multistate and bipartisan advocacy to the U.S. Department of Agriculture (“USDA”) supporting rules that would improve competition in Minnesota’s agricultural and food industries. For example, Minnesota is part of a small group of state attorneys general leading participation in the new USDA Agriculture Antitrust Competition Partnership providing \$12 million in funds administered by The State Center to support state attorneys general initiatives such as investigations, research, and studies. Also, in January 2023, the Minnesota Attorney General led a group of 4 states in submitting a comment to a proposed USDA rule supporting inclusive competition and market integrity under the Packers and Stockyards Act.

OUTREACH

The antitrust enforcement team has been engaged in outreach to state and federal agencies and other constituents about antitrust issues and concerns. For example, on April 12, 2023, the antitrust enforcement team led a virtual panel discussion hosted by the Minnesota Attorney General’s Office “Protecting and Supporting Robust Competition in the Increasingly Consolidated Minnesota Meat and Poultry Industries” that included participation from USDA and a rural butcher. Attorneys of the antitrust enforcement team have also conducted the following outreach:

- Presented a seminar on compliance with the new health care entity transaction law at a Health Law Forum held at the University of Minnesota;
- presented a seminar on the Right-to-Repair and Minnesota’s new Digital Fair Repair Act, Minn. Stat. 325E.72, to the Minnesota Intellectual Property Law Association;
- Provided training to state agencies that solicit bids for state work about warning signs for unlawful bid rigging;
- Presented at an antitrust conference about issues and concerns with respect to labor markets, including no-poach agreements among employers; and
- Established a multistate group to educate and collaborate on bid rigging investigations and criminal enforcement.

CIVIL RIGHTS DIVISION

The Civil Rights Division was launched with dedicated funding from the Legislature to hire three attorneys and an investigator, all of whom have been hired. This Division incorporates and expands upon the work that the Office’s Special Outreach and Protection Unit started in 2022. The new Civil Rights Division will bring to bear the Attorney General’s consumer-protection powers to protect consumers in the marketplace that are targeted—or disproportionately harmed—by discrimination and fraud on the basis of race, religion, age, and other protected statuses. The new Division specializes in discrimination in the marketplace and supplements the human-rights enforcement work performed by the Minnesota Department of Human Rights.

Below is a *representative sample of some but not all* legal work performed by the Division in FY 2023.

NEW ENFORCEMENT WORK

- ***In re Investment Property Group UT.*** The Division recently launched an investigation into whether IPG—a private real estate investment and management company based in Utah—has violated Minnesota’s law protecting tenants from exorbitant or unsubstantiated utility bills and unlawfully attempted to evict dozens of its largely-Somali tenants based on fraudulent charges. The company’s tenants report being billed for exorbitant utility charges suddenly and in the middle of their lease, some of which totaled more than \$2,000. The investigation includes examining IPG’s compliance with Minnesota law when imposing new utility charges on its thousands of tenants as well as whether the associated eviction filings are racially motivated, which the Minnesota Human Rights Act prohibits.
- ***Home-purchaser fraud.*** The Division is investigating companies that use deceptive and illegal practices to sell homes to Somali- and Spanish-speaking families. The companies exploit families’ religious beliefs or their language barriers to sell them homes using under-regulated purchasing agreements called contracts for deed. The targets of the investigation appear to use predatory tactics and misrepresent essential terms, including

misrepresenting that the agreements are compliant with religious or cultural practices when in fact they are not and are actually designed to trigger defaults so that the families will lose both their home and the equity they built by making timely payments for years.

TENANT-PROTECTION LITIGATION

- ***State of Minnesota v. HavenBrook Partners, LLC, Pretium Partners, LLC, et al.*** In February 2022, the Office filed suit against a group of vertically integrated companies that rent out over 600 single-family homes to Minnesota families. The lawsuit alleges that defendants severely under maintain their homes and fail to make repairs in compliance with Minnesota’s lead-paint hazard laws. The suit also alleges that defendants violated Emergency Executive Order 20-79 by issuing notices of non-renewal and notices to vacate to tenants who fell behind on their rent during the Peacetime Emergency. Lastly, the suit alleges that defendants violated the Consumer Fraud Act and Deceptive Trade Practices Act by misrepresenting to tenants that defendants offered a 24-hour emergency repair service when in fact they often did not make repairs within 24 hours and tenants have been forced to wait days or weeks for emergency repairs. Litigation is ongoing and the Court of Appeals recently affirmed the District Court’s finding that Defendant Pretium Partners is subject to jurisdiction in Minnesota. Lastly, the suite alleges that defendants violated the Consumer Fraud Act and Deceptive Trade Practices Act by misrepresenting to tenants that defendants offered a 24-hour emergency repairs service when in fact they often did not make repairs within 24 hours and tenants have been forced to wait days or weeks for emergency repairs.

RESIDENTIAL UTILITIES DIVISION

The Residential Utilities Division (“RUD”) 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 service-quality issues. The Division’s work supports Minnesota’s economy and quality of life by making sure that utilities’ rates are reasonable, their expenses are prudent, and that customers receive high-quality service. This is essential to ensure that the state’s citizens and small businesses are not burdened by excessive costs or poor reliability for these necessary services.

Below is a *representative sample of some but not all* legal work performed by the Division in FY 2023.

- **Utility Rate Cases.** Utility rate cases are the primary means for the Public Utilities Commission (“PUC”) to establish the amount that utility customers pay. The PUC decides how much utilities should recover for providing electric or natural gas service, the amount that different ratepayer groups pay (i.e., residential customers, industrial customers, commercial customers etc.), and how much of these costs will be “fixed” or vary with the amount of energy consumed. This past year, RUD participated in several rate cases by challenging the overall rates the utilities sought to impose on customers, as well as the portion of those increases that would be borne by residential and small

business ratepayers and the fixed charges that residential customers must pay to simply access utility service. These cases impacted customers in large swaths of the Metro area and Greater Minnesota. In one electric-rate case, involving Minnesota Power, RUD contributed to an effort that saved ratepayers \$49.5 million. In a second electric-rate case, involving Xcel Energy, RUD along with other stakeholders achieved a \$372 million reduction in final rates. The RUD also entered settlements in the rate cases for two natural-gas utilities, Minnesota Energy Resources Corporation and Xcel Energy. These settlements saved ratepayers \$11.5 million and \$15.6 million respectively. These utilities jointly serve millions of Minnesotans all over the state.

- **Rural Telecom Advocacy.** With fewer carriers and uneven buildout of telecommunications infrastructure, there are many barriers to rural Minnesotans having access to reliable telephone and broadband internet service. The RUD is involved in several dockets focused on ensuring Minnesotans have reliable services. In 2020, the Communication Workers of America filed a complaint with the PUC alleging CenturyLink was in breach of a variety of service quality standards set forth in Minnesota Rules Chapter 7810. This summer, the RUD took part in Office of Administrative Hearings (“OAH”) public hearings across the state to gather information about customer service concerns. The CenturyLink matter is headed to a contested case hearing in fall 2023 to assess whether CenturyLink is falling short of its obligations under state law. The RUD is also participating in a contentious docket concerning LTD’s expanded Eligible Telecommunications Carrier (“ETC”) designation. The RUD advocated in favor of Minnesota Telecom Alliance and Minnesota Rural Electric Association’s motion to suspend LTD’s ETC designation, arguing that LTD is not providing services as promised and will not be able to provide rural broadband expansion as needed in greater Minnesota. Suspension of LTD’s expanded ETC designation is needed to ensure once-in-a-generation federal dollars for development of rural broadband are able to flow to reliable carriers to provide service in underserved communities.
- **Ratepayer-Funded Electric Vehicle Charging Stations.** In August 2022, Xcel Energy asked the PUC to allow it to spend nearly \$400 million in ratepayer funds on various electric-vehicle initiatives, including more than \$190 million earmarked for a fast-charging network. In February and March of 2023, RUD filed testimony opposing this request based on concerns that low-income ratepayers would be required to fund programs that primarily benefit higher-income individuals, as well as concerns about the impact of Xcel’s proposal on the private market. In the face of opposition by RUD and others, Xcel withdrew its proposal, thereby saving ratepayers hundreds of millions of dollars.
- **Controlling Costs During the Energy Transition.** As Minnesota transitions to a carbon-free energy future by 2040, there are an increasing number of requests by utilities for approval to implement new technologies. As emerging technologies, the costs of these projects can be difficult to predict. In order to protect ratepayers, RUD successfully argued for cost caps to protect ratepayers from runaway costs in two major projects. In one proceeding, the PUC imposed a cost cap at Xcel’s own estimates for hundreds of millions of dollars of capital and O&M costs related to its Advanced Metering

Infrastructure and Field Area Network technologies. In another proceeding and at RUD's urging, the PUC capped cost recovery for a long-duration energy-storage project.

EDISCOVERY AND LITIGATION SUPPORT DIVISION

The eDiscovery & Litigation Support Division consists of attorneys, litigation support specialists, and other professionals who provide technical assistance with electronic discovery management, legal research services, and data practices guidance to staff.

The eDiscovery team provides services to assist in all aspects of electronic discovery – helping to develop strategy, implement legal holds, collect and process electronic data, set up document reviews, configure analytical tools, run document productions, and aid with trial presentation. They also help during discovery negotiations and draft protocols for how electronic data will be exchanged. As different forms of electronic documents and communications become increasingly common throughout state government, the volume of electronic data that must be collected, reviewed, and produced in each case is increasing rapidly. The Division manages terabytes of data, consisting of tens of millions of documents, and processes several hundred document productions each year.

The Division also assists with trial logistics and presentation needs. Staff survey available courtroom technology and propose solutions to address any gaps identified. Based on case needs, staff may attend trial and present evidence electronically. The Division also provides consultative services to design graphics and other exhibits that visually communicate the case theme.

The Division regularly explores technological solutions that support the AGO's complex litigation portfolio. The Division provides a robust suite of legal research, citation, and drafting tools to help prepare legal papers. The Division also houses the AGO's Data Practices Compliance Official and provides support to staff responding to data requests.

CONSUMER LITIGATION FUND

The Consumer Litigation Fund ("CLF") was established as a special revenue fund in the state treasury effective July 1, 2023. Laws of Minnesota 2023, chapter 62, article 2, section 28 (to be codified at Minn. Stat. § 8.315). Subdivision 3 of the law requires a report annually by October 15 on activities funded through money disbursed from the CLF account during the prior fiscal year. *Id.*

Because the CLF was established effective July 1, 2023, no money was disbursed from the fund during FY 2023. In the future, the Attorney General's Office will provide the required update on activities funded through money disbursed from the CLF.

SOLICITOR GENERAL SECTION

EMPLOYMENT, TORTS, AND PUBLIC UTILITIES COMMISSION DIVISION

The Employment, Torts, and Public Utilities Commission Division (“ETP”) defends the duly enacted laws of the State of Minnesota; represents the State in employment and tort claims brought against the State; and provides legal representation to the Public Utilities Commission (“PUC”).

In each of these three areas, a *representative sample of some but not all* the major current and future legal issues that the Division has addressed in FY 2023 include:

DEFENDING THE DULY ENACTED LAWS OF THE STATE

- **Defending reasonable gun restrictions.** The Second Amendment test established by the United States Supreme Court in *Bruen* requires reference to historical practice and has spawned litigation across the country. The primary example in Minnesota is *Worth v. Harrington*, a federal court challenge to Minnesota’s law that only allows gun permits for those 21 and older (Minn. Stat. § 624.714). Plaintiffs are between 18 and 20 and allege that their Second Amendment rights are violated by the statute. The State introduced evidence through a constitutional historian that historically, people under 21 were minors with no legal autonomy and would not have had the independent right to carry a firearm. Plaintiffs argued that militia statutes required those 18 and over to enlist and bring their own weapons to service. On cross-motions for summary judgment, the district court concluded that the law violated the Second Amendment. Defendants appealed to the Eighth Circuit. In addition to *Worth*, the AGO has partnered with the Gun Violence Prevention Clinic at the University of Minnesota Law School to intervene in multiple criminal cases in state court in which defendants are using *Bruen* to attempt to dismiss criminal charges against them for violating gun regulations.
- ***Doran 610, et al. v. Walz et al.*** ETP successfully defended a challenge to emergency executive orders that limited evictions during the COVID-19 crisis. The landlords brought constitutional and statutory claims seeking compensation for losses that allegedly resulted from the executive orders. All claims were eventually dismissed.
- ***Snell v. Walz, et al.*** In August 2020, a group of plaintiffs challenged the face-covering mandate implemented by Executive Order. They argued that the Governor’s declaration of a peacetime emergency in response to a public-health emergency exceeded his powers under the Minnesota Emergency Management Act, that the face-covering mandate was contrary to a statute, and that the face-covering mandate violated their constitutional rights. The district court dismissed the case. The challengers appealed. The Court of Appeals dismissed the appeal as moot because the peacetime emergency and mask mandate had ended. The Supreme Court concluded that although the appeal was technically moot, the court should consider whether the Act authorizes the declaration of a peacetime emergency based on a public-health emergency such as the COVID-19

pandemic. The Court of Appeals concluded the Act authorizes the Governor to declare a peacetime emergency based on a public-health emergency such as the COVID-19 pandemic. The challengers have asked the Minnesota Supreme Court to accept review again.

EMPLOYMENT AND TORT CLAIMS

Employment litigation often includes claims against the State under the Minnesota Whistleblower statute, Family and Medical Leave Act, Fair Labor Standards, and claims of discrimination and harassment under federal and state anti-discrimination statutes. The Division also provides legal representation to the State in lawsuits involving labor issues.

Tort claims against the State, its agencies, and employees typically arise in the form of personal-injury and property-damage lawsuits. Claims include negligence, medical malpractice, defamation, infliction of emotional distress, assault and battery, excessive use of force, and violations of federal civil rights.

- ***Aspley v. Walz et al. & Rustan v. Minn. Dep't of Corrections, et al.*** In these cases, ETP successfully defended wrongful death claims related to COVID-19. In *Aspley*, plaintiff alleged defendants failed to prevent decedent's death by allowing COVID-19-positive nursing home residents to return following hospital stays, even though federal guidelines governed nursing home COVID-19 patient return policies, and defendants' policies mirrored those guidelines. The district court dismissed the case and the Court of Appeals affirmed. In *Rustan*, plaintiff alleged the decedent contracted a fatal case of COVID-19 while incarcerated at MCF-Faribault. His next of kin sued several defendants alleging deliberate indifference, negligence, medical malpractice, and claims under the Americans with Disabilities Act and the Rehabilitation Act. DOC moved to dismiss on several bases, including that DOC reasonably responded to the COVID-19 pandemic. All claims against DOC and its staff were dismissed.
- ***Sterry v. Minn. Dep't of Corrections, et al. & Brisson v. Minn. Dep't of Corrections, et al.*** ETP is defending cases that seek to expand the scope of liability of state agencies, where the legal theories proposed by plaintiffs advocate something close to strict liability, even for egregious conduct that was taken by staff for purely personal reasons. In both cases, the plaintiff alleges they were sexually assaulted by a Department of Corrections ("DOC") employee. In *Sterry*, plaintiff is an offender who alleges that he was sexually harassed and assaulted by a correctional officer and brings various tort claims against defendants. The district court dismissed all claims except one, finding that the DOC cannot be vicariously liable for something occurring outside the scope of employment pursuant to the Tort Claims Act. After stipulating to dismiss the remaining claim, Plaintiff appealed. The Court of Appeals reversed, concluding that the DOC could be vicariously liable for sexual assaults, even if committed solely for the correctional officer's personal motivation. The Minnesota Supreme Court accepted review of the following issue: Whether the Minnesota legislature intended the statutory definition of "scope of office or employment" contained in the Minnesota State Tort Claims Act, Minn. Stat. § 3.732, subd. 1(3), to be as broad as the common law definition applied to

vicarious liability claims against private employers. In *Brisson*, the Court of Appeals applied their published decision in *Sterry* to likewise conclude the DOC could be vicariously liable for its staff member's conduct. It also concluded the plaintiff could pursue a Minnesota Human Rights Act ("MHRA") claim which alleged the sexual assault constituted public services discrimination. The DOC submitted a petition for further review, seeking clarification on the liability standard for the public services provision of the MHRA, and consistent with the petition in *Sterry*.

- ***Schmid-Egleston v. Minn. Dep't of Corrections***. Plaintiff served as the Psychological Services Director at Minnesota Correctional Facility–Red Wing for the Sex Offender Treatment Program. After an investigation, she was disciplined for engaging in inappropriate conduct towards residents (cursing, for example). Plaintiff resigned after a second investigation into her conduct was initiated. Plaintiff sued the DOC asserting claims for sex discrimination, reprisal, and whistleblowing. The DOC prevailed on its motion for summary judgment. Plaintiff agreed not to appeal in exchange for the DOC not seeking costs.

PUBLIC UTILITIES COMMISSION

The Division provides counsel to and defends the PUC when its decisions are challenged in the courts.

- ***Electric Rate Cases***. Minnesota's two largest utilities – Xcel Energy and Minnesota Power – each filed petitions for rate increases. Attorneys in the division advised the PUC on whether the proposed rates met the legal standard of "just and reasonable" and allowed the utility to make a return sufficient to attract capital. Xcel Energy initially sought a 21.2% increase; the Commission approved a rate increase of 9.6%; Minnesota Power sought a 17.58% increase in rates; the Commission approved a 9% increase. Minnesota Power and a group of its large commercial/industrial customers appealed the Commission decision to the Minnesota Court of Appeals. Xcel and its large commercial industrial customers petitioned the Commission for reconsideration, often a precursor to an appeal. The Commission denied the appeal.
- ***Carbon Capture Pipeline***. Attorneys in this division advised the Commission on its jurisdiction to permit the first carbon capture pipeline in the state, which is proposed to run from an ethanol plant in Otter Tail County to the North Dakota border. The Commission found it had jurisdiction. The carbon is proposed to be sequestered underground in North Dakota. The project is currently undergoing environmental review and will likely come back to the Commission for a final permit decision in 2024.

ENVIRONMENTAL & NATURAL RESOURCES DIVISION

Attorneys in the Environmental & Natural Resources Division ("ENR") provide legal representation to various state agencies, including the Minnesota Pollution Control Agency ("MPCA"), Minnesota Department of Natural Resources ("DNR"), Minnesota Department of

Agriculture (“MDA”), Environmental Quality Board (“EQB”), Board of Water and Soil Resources (“BWSR”), and the Board of Animal Health (“BAH”).

ENR attorneys provide legal representation in matters arising out of the agencies’ and boards’ enforcement programs. The Division provides legal representation to the agencies and boards in the State and federal district and appellate courts and at the Office of Administrative Hearings. ENR attorneys also defend the agencies and boards in state and federal district, appellate, and administrative courts when parties bring actions challenging their programs or actions.

In FY 2022, the AGO brought five transactional attorneys who had been spread across the Office together into one division (ENR) to share resources and cross-train. The transactional group within ENR provides legal representation to the Department of Administration, Minnesota Housing Finance Agency, Land Exchange Board, BWSR, DNR, MPCA, Department of Revenue, and the Department of Transportation on various real-estate matters, including various real-estate acquisition, title, and land-use matters, ownership of submerged lands, tax forfeitures, easements (including easements for wetland and habitat protection and wetland banking), probate proceedings, trusts, life estates, adverse possession, bankruptcy, boundary agreements, indemnification, deed restrictions, land registration, quiet title, road vacation, condemnation, declarations, protective covenants, local government fees charged against state-owned lands, and use of state bond-financed property.

Below is a *representative sample of some but not all* legal work performed by ENR for the agencies and boards during FY 2023:

- **Line 3 Issues.** The Office successfully represented the State in enforcement actions brought against Enbridge Energy concerning its construction of the Line 3 project. This included civil enforcement actions related to water quality violations and unpermitted water appropriations resulting in \$11 million in payments, environmental projects, and financial assurances from Enbridge Energy. The Office also filed a misdemeanor criminal charge for Enbridge Energy’s breach of an aquifer in Clearwater County, resulting in a diversion agreement.
- **Clean Cars Initiative.** The Office successfully defended a challenge to the State’s Clean Cars Rule, which MPCA adopted to prevent emissions standards for vehicles from backsliding in response to federal efforts to loosen emissions standards. The Office is now representing MPCA in a second suit brought challenging the rule.
- ***State of Minnesota v. API et al.*** The Office brought suit against various petroleum industry participants that misrepresented the risks of climate change caused by their products. After the defendants attempted to remove the action to federal court, the Office obtained an order to remand the suit to state court. Defendants appealed to the 8th Circuit and the 8th Circuit upheld that order on appeal.

- **Chronic Wasting Disease Issues.** The Office successfully represented the DNR and BAH in work to prevent the spread of chronic wasting disease in deer. This included advising the DNR and BAH in enforcement matters, and pursuing cost-recovery actions against individuals who violate the State’s laws to contain the spread of Chronic Wasting Disease.
- **PFAS.** The Office continues to represent state agencies in a wide variety of enforcement and remediation actions brought as a result of PFAS contamination of soils and groundwater. These efforts have focused on preventing additional releases and ensuring the parties responsible for existing contamination pay for the costs of clean-up, rather than State taxpayers. The Office represented the interests of the State and other stakeholders in opposing elements of a proposed national settlement of PFAS contamination in municipal water systems.
- **Mesabi Metallics.** In 2022, the Office defended the DNR’s decision to terminate mineral leases held by Mesabi Metallics after Mesabi Metallics failed to meet agreed deadlines to secure the necessary funding to advance its mining project following many years of delays. This litigation continued into 2023 and concluded when the Minnesota Supreme Court declined to review a decision affirming a judgment in DNR’s favor. With Executive Council approval, the DNR thereafter leased the same minerals to Cleveland-Cliffs for use in extending the life of the Hibtac mine. Mesabi Metallics sued to block these leases. The Office is defending the State’s decisions on these critical leases.
- **Protecting Public Access to Waters/Marketable Title Act.** The Office represented the DNR in litigation concerning whether the marketable title act could be used to extinguish public access to the State’s waters conferred by platted but unbuilt roads. This case was argued to the Minnesota Supreme Court, resulting in a decision confirming that the marketable title act does not extinguish platted roads. This outcome protects hundreds if not thousands of public access points to the State’s waters.

TAX LITIGATION DIVISION

The Tax Litigation Division provides legal representation to the Minnesota Department of Revenue (“DOR”) in the Minnesota Tax Court and at the Minnesota Supreme Court, as well as the State and federal district courts and federal bankruptcy courts. The Division handles all tax types, including multimillion-dollar corporate franchise-tax claims, a high volume of complex sales-and use-tax cases, and complex utility valuation cases. The Division also provides legal representation and assistance to DOR and other state agencies filing claims in bankruptcy court. Lawyers in the Division also review and respond to dozens of foreclosure proceedings, quiet title actions, and other cases involving State interests.

Below is a *representative sample of some but not all* legal work performed by the Tax Litigation Division in FY 2023.

CASES RELATED TO CORPORATE FRANCHISE TAX

- ***E. I. du Pont de Nemours and Company & Subsidiaries v. Commissioner of Revenue.*** This case involves a corporate franchise tax assessment of the DuPont chemical company in the amount of approximately \$11 million. At issue is the treatment of forward exchange contracts (“FECs”) involved in currency trading, as well as the treatment of gains from the sale of a business and certain asserted royalty income when determining the amount of DuPont’s income apportionable to Minnesota. The case is scheduled for trial on December 6 and 7, 2023.
- ***Uline Inc. v. Commissioner of Revenue.*** This is a tax nexus case stemming from an assessment against a multistate packaging company. Uline moved its warehousing operations from Minnesota to Wisconsin in 2013 and asserts that this was a sufficient measure to avoid taxation (on behalf of its shareholders) in Minnesota under P.L. 86-2702 during the years in question (2014-2015). The parties brought cross-motions for summary judgment. In an order dated June 23, 2023, the Tax Court denied Uline’s motion for summary judgment and granted the Commissioner’s motion for partial summary judgment.
- ***Cities Management, Inc. v. Commissioner of Revenue.*** This matter involves non-resident withholding tax for the 2015 tax year. At issue is the Commissioner’s treatment of gain from the sale of corporate assets as apportionable business income. The Tax Court granted the Commissioner’s Motion for Summary Judgment and Appellant appealed to the Minnesota Supreme Court. Oral argument was held on June 8, 2023. We await the Court’s decision.

CASES RELATED TO WHOLESALE DRUG DISTRIBUTOR TAX

- ***Dakota Drug v. Commissioner of Revenue.*** The Commissioner audited Dakota Drug’s wholesale drug distributor tax returns and assessed additional tax based on an adjustment that increased Dakota Drug’s gross revenues. The adjustment is based on the Commissioner’s conclusion that Dakota Drug’s gross revenues should not be reduced by rebates or account credits Dakota Drug provides to pharmacies through its rebate program. Cross motions for summary judgment are pending before the Tax Court which should rule by November 11, 2023.

CASES RELATED TO PIPELINE VALUATION

The personal property of utility companies is centrally assessed by the Commissioner of Revenue for county property-tax purposes, rather than being assessed by the county assessors for the multiple counties in which the pipeline is located. These cases pertain to the department’s unitary valuation of gas-distribution pipelines located in Minnesota. Unitary valuation cases involve extremely complex valuation concepts and competing appraisals from experts retained by both sides. In utility-valuation cases, these taxpayers typically seek an approximate 30% reduction in taxable value. Any decrease in the department’s valuation will result in the affected counties refunding taxes.

- ***CenterPoint Energy Resources Corp. v. Commissioner of Revenue (2018-2021).*** CenterPoint Energy challenges the Commissioner’s 2018, 2019, 2020, and 2021 valuations of its natural-gas distribution pipeline operating property. CenterPoint Energy alleges the property’s estimated market value is too high and that the property has been unequally assessed. The trial of the 2018 and 2019 cases resulted in the tax court reducing the values for each year. The Commissioner appealed that decision to the Minnesota Supreme Court, which ruled in favor of CenterPoint. The Office is in the process of resolving all the valuation years based on the Supreme Court decision.

EDUCATION DIVISION

The Education 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 (Minnesota State) system of 37 separate colleges and universities. In addition to providing legal representation to the numerous Minnesota State campuses, the Division also provides legal representation to the Minnesota Department of Education, the Office of Higher Education, the Perpich Center for Arts Education, the State Academies and the three public pension boards.

Below is a ***representative sample of some but not all*** legal work performed by the Education Division in FY 2023.

- ***Alejandro Cruz-Guzman, et al. v. State of Minnesota, et al. and Higher Ground Academy, et al.*** This is a class-action lawsuit brought in November 2015 against the State, the Minnesota Senate, the Minnesota House of Representatives, the Minnesota Department of Education, and its Commissioner alleging that the education that the school children in the Minneapolis and Saint Paul Public Schools receive is inadequate and discriminatory on the basis of race and socioeconomic status (poverty and free lunch). Certain charter schools have intervened as defendants. Plaintiff sought partial summary judgment after the Minnesota Supreme Court remanded the case. The district court denied partial summary judgment and Plaintiff appealed that decision to the Minnesota Court of Appeals. In its September 26, 2022, decision, the court of appeals determined a racially imbalanced school system caused by de facto segregation by itself is not enough to demonstrate an Education Clause violation, even if state action contributed to the racial imbalance. The Plaintiffs appealed that decision to the Minnesota Supreme Court, which heard argument in May 2023. We await a decision from the Supreme Court.
- ***Loe, et al. v. Walz, et al.*** Two evangelist colleges (Crown College and University of Northwestern-St. Paul) and two families commenced a federal lawsuit against Commissioner Jett and the Minnesota Department of Education (“MDE”) on May 24, 2023. The suit challenges a 2023 law that prohibits eligible institutions in Postsecondary Enrollment Options (“PSEO”) from requiring high school students to sign a faith statement and prohibits institutions from discriminating against students on the basis of religion, sexual orientation, gender identity, or other protected categories. Parties

stipulated, and the Judge signed a preliminary injunction to enjoin enforcement during the litigation. MDE has brought counterclaims against the schools alleging Constitutional and statutory violations related to the schools' policies.

- ***Portz, et al. v. St. Cloud State University/Minnesota State.*** Five members of the women's tennis team filed a class action complaint in federal court alleging Title IX and Equal Protection violations in the wake of the University's decision to eliminate six sports teams (four men's and two women's). Subsequently, a second women's team (Nordic skiing) joined the lawsuit. Following a trial, the federal district court found St. Cloud State in violation of Title IX, entered a permanent injunction, and awarded attorneys' fees. St. Cloud State appealed the decision and the Eighth Circuit affirmed in part and reversed in part the federal district court's decision. On remand, and in response to the parties' motions, the federal district court found St. Cloud State is in nearly full compliance with Title IX and the earlier injunction. The court continues to monitor.
- ***K.O., et al. v. Willie Jett, Commissioner of Education.*** On behalf of its client, the Disability Law Center sued in federal court contending that Minnesota's statute that caps the age to receive special education services to July 1 of the year that the student turns 21 conflicts with federal law requiring states to provide special education services "through the age of 21." A class of plaintiffs has been certified. The Legislature amended the law to moot future injunctive relief. The parties moved for cross motions for summary judgment, and in August 2023, the district court ruled that the Minnesota statute violated federal law.

CASES RELATED TO THE SCHOOL NUTRITION PROGRAM

The Department of Education's Food and Nutrition Program Services ("NPS") administers the federal Child and Adult Care Food Program ("CACFP"). In the last few years, NPS noted a number of irregularities in claims coming from certain providers and subsequently denied many entities reimbursement for those claims because the provision of meals to children could not be documented. Some of those providers contested the denials and those cases have proceeded in court.

- ***Feeding Our Future v. Minnesota Department of Education.*** Feeding Our Future ("FOF"), a participant in the federal food programs, displayed irregularities that the Minnesota Department of Education deemed suspicious and sought to slow FOF's unexplained growth and to suspend payments to FOF until Education could validate the eligibility of FOF's claims. FOF sued Education alleging Education, who administered the federal programs at the state level, was discriminating against FOF and violating the federal regulations governing the federal food programs. Education denied any wrongdoing and defended the allegations against it. Education referred the suspicious activity to federal authorities with jurisdiction over the funds which later lead to 60 criminal indictments by the US Attorney's Office and to date a number of guilty pleas. FOF dismissed the lawsuit after its involvement in a scheme to steal millions of dollars of federal food aid became public on January 20, 2022. Education filed a claim in Feeding

Our Future's dissolution proceeding to recover the litigation fees and costs it incurred in defending itself against FOF's baseless lawsuit, and that claim is still pending.

- ***Partners in Nutrition d/b/a Partners in Quality Care Appeal of MDE Decision Child and Adult Care Food Program Appeals.*** PIQC appealed three separate NPS decisions disallowing PIQC's November 2021 through May 2022 reimbursement claims under the CACFP and its removal as a provider of services. The cases were consolidated before the Minnesota Court of Appeals, and the court affirmed the denial of specific claim submissions and sent the disqualification decision back to MDE to engage in a different process.
- ***Addis Foundation v. Minnesota Department of Education.*** Addis purported to distribute food to children as part of the CACFP program. In July 2022, Addis Foundation filed a complaint in response to MDE's denials of its reimbursement claims for November 2021 through April 2022, asserting claims of discrimination. The reimbursement claims were submitted by Addis's sponsoring organization, Partners in Quality Care. The Court granted our motion to dismiss for lack of jurisdiction.
- ***In re: New American Development Corporation ("NADC") MDE-NPS Appeal.*** NADC appealed the NPS decision disallowing NADC's January through April 2022 reimbursement claims under the CACFP to the Court of Appeals. On July 17, 2023, the Court of Appeals affirmed MDE's determination to deny NADC's reimbursement claims for January through March 2022, and remanded the April 2022 claims to be considered by the MDE panel.
- ***Appeal of MDE's Second Proposed Disqualification of Youth Leadership Academy, dba Gar Gaar Family Services.*** NPS disqualified the Youth Leadership Academy/Gar Gaar Family Services as a sponsor in the CACFP program on January 20, 2023. On February 10, 2023, the Appeal Panel upheld the disqualification for most of the Gar Garr officials and the matter was not further appealed.

GOVERNMENT SUPPORT SECTION

COMMERCE, ELECTIONS, AND TRADES DIVISION¹

The Commerce, Elections, and Trades Division primarily provides legal representation to the Department of Commerce, the Secretary of State, the Department of Labor and Industry (“DLI”), and many other boards, agencies, councils, and commissions. The Division appears in state and federal district and appellate courts and in administrative proceedings.

Below is a *representative sample of some but not all* legal work performed by the Division in FY 2023.

LITIGATION

Division staff continued defending a lawsuit challenging the constitutionality of the Alec Smith Insulin Affordability Act. Since taking effect in 2020, the law has allowed more than 1,100 Minnesotans to receive life-saving insulin. The case is back before the district court after the Eighth Circuit reversed the district court’s dismissal.

Division staff successfully defended the Secretary of State in multiple cases challenging election-related matters, including those related to absentee ballots, voting equipment, and data retention. After successfully defending the constitutionality of the prior statute regarding when voting rights are restored to those convicted of a felony, Division staff are currently defending a challenge to the amended statute. Staff successfully defended the constitutionality of the statute that presumes that those subject to a guardianship retain the right to vote.

Division staff successfully defended a lawsuit by several credit unions and a trade association that sought to enjoin the Department of Commerce from enforcing state laws related to credit unions acquiring assets and liabilities of state-chartered banks.

COMMERCE AND LABOR ENFORCEMENT

The Division represents the Department of Commerce and DLI in numerous enforcement actions against individuals and businesses that act in regulated industries and violate state laws. For example, Division staff represented Commerce in an enforcement action against a major pharmacy benefit manager that was improperly steering consumers to affiliated pharmacies. The case ultimately settled with the company agreeing to open its preferred pharmacy network to unaffiliated pharmacies and to pay a \$500,000 civil penalty.

¹ This Division was previously named “Administrative Law” and has been renamed to more descriptively reference the type of work performed.

ENERGY AND TELECOM

The Division represents the Department of Commerce in proceedings before the Public Utilities Commission and in related court cases. Through this representation, Division staff help the Department secure safe, reliable, and affordable electric, gas, and telephone service. For example, in collaboration with Commerce's financial experts, the Division helped reduce requested increases for electric and gas service for utilities across Minnesota, from the metro area to the Iron Range. The Division has advocated against unreasonable and unsupported increases, helping reduce Xcel Energy's proposed electric rate increase from 20.6% to 9.6% over three years, and Minnesota Power's proposed electric hike from 17.6% to 9.5%. The Division also secured a settlement that reduced Xcel Energy's proposed natural gas rate increase from 6.6% to 3.8%. Reducing rate increase helps residential ratepayers afford their lives and keeps Minnesota businesses and industries competitive with peers in other states. The Division has also been representing Commerce in connection with an ongoing investigation of the adequacy of CenturyLink's service quality to its retail landline telephone customers. Reliable access to landline telephone service is especially important for lower income and elderly customers, and for customers living in Greater Minnesota where they may have fewer options.

LICENSING BOARDS

The Division represents numerous non-health-related licensing boards, routinely giving advice to boards and separately assisting complaint and ethics committees in reviewing complaints against licensees and pursuing administrative action against licensees who violate applicable laws and rules. For example, the Division represented the Peace Officers Standards and Training Board's complaint committee in an action to hold a county sheriff accountable for driving under the influence, resulting in a suspension of his peace-officer license. The Division also represented the Board of Cosmetologist Examiners in obtaining a cease-and-desist order and civil penalty against an unlicensed individual who repeatedly misled consumers by hosting, and charging hundreds of dollars for, "training courses" and "certificates" that do not allow the paying consumers to practice professionally and that do not count toward licensure.

HUMAN SERVICES DIVISION

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

Below is a *representative sample of some but not all legal* work performed by the Division in FY 2023.

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 over one million Minnesotans. The Division settled and the district court approved a class-action settlement related to disability services in *Murphy, et al. v Harpstead*, which it has litigated for the past seven years. The Division also represents DHS in connection with a lawsuit over its Medical Assistance procurement.

CHILDREN AND FAMILY SERVICES

Division attorneys in the children and family services area handle legal issues relating to public-assistance programs, child support, and child-protection matters. Public-assistance programs include the Minnesota Family Investment Program, the General Assistance program, the Minnesota Supplemental Aid program, and the Federal Supplemental Nutrition Assistance Program (“SNAP,” formerly called Food Stamps). Division attorneys represented the agency in appeals from agency actions related to public-assistance programs. Division attorneys defended the agency against an allegation that the program’s SNAP overpayment settlement practices were unconstitutional.

MENTAL HEALTH

Division attorneys in the mental-health area provide legal representation to 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 Forensic Mental Health Program (“FMHP”), and the Minnesota Sex Offender Program (“MSOP”). Division attorneys represent DHS’s interests in a broad spectrum of litigation. Division attorneys continue to represent DHS in the *Karsjens, et al. v. Harpstead, et al.* class action challenging conditions of confinement at the Minnesota Sex Offender Program. Division attorneys also regularly defend DHS in connection with admissions to DHS facilities in Rule 20 matters, including two putative federal class actions and six state court cases relating to the priority admissions law.

INSPECTOR GENERAL

Division attorneys provide legal representation to the DHS Office of the Inspector General in various case types, including maltreatment cases (abuse, neglect, and financial exploitation) and Medicaid overpayment recovery. Division attorneys defended the agency’s actions in two lawsuits argued at the Minnesota Supreme Court involving the agency’s Surveillance Integrity and Review Section.

STATE AGENCIES DIVISION

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

Below is a *representative sample of some but not all* legal work performed by the State Agencies Division in FY 2023.

DISTRICT COURT LITIGATION/OBTAINING INJUNCTIVE RELIEF TO PROTECT THE PUBLIC

The Division brings cases on behalf of agencies to enforce statutes. For instance, the Division successfully represented the Department of Human Rights (“MDHR”) in its civil rights pattern or practice case against the Minneapolis Police Department. In the immediate aftermath of George Floyd’s murder by Minneapolis police officers, Division attorneys obtained a temporary injunction on behalf of MDHR against the City that implemented immediate public safety changes such as banning chokeholds. After MDHR found probable cause that the City and the Police Department engaged in a pattern or practice of race-based policing, Division attorneys attended months of settlement negotiations with MDHR and the City and assisted MDHR in obtaining a court-enforceable settlement agreement mandating critical changes to the Minneapolis Police Department aimed at ensuring lawful, non-discriminatory policing that results in better public safety. The Division also represented MDHR in obtaining settlements in state district court for employees who were sexually harassed by supervisors.

In FY2023, the Division continued to represent the Department of Labor and Industry (“DLI”) in labor standards matters, including matters that involve wage theft and illegal child labor. For instance, the Division represented DLI in a lawsuit alleging a meat-processing company violated Minnesota’s child labor laws and successfully obtained a temporary restraining order on DLI’s behalf to prohibit further violations of such laws. The Division also continued to handle lawsuits to obtain the Department of Health’s (“MDH”) appointment as a court-appointed receiver of nursing homes—allowing MDH to assume control over poorly-functioning facilities and ensure residents’ safety. These cases allow MDH to stabilize operations where financial mismanagement and operational deficiencies had created an emergency threatening ongoing staffing and operation of the facilities. The Division also assisted MDH in negotiating a settlement with three certified boarding-care homes to provide for a third-party audit and monthly monitoring of finances.

ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

The Division represents state agencies that bring enforcement proceedings in a variety of legal forums. For instance, the Division represents MDH in administrative proceedings involving assisted-living facilities that violate Minnesota’s Assisted Living Licensure law. The law established regulatory standards governing the provision of housing and services in assisted-living facilities to help ensure the health, safety, and well-being of residents. The Division successfully represented MDH in an administrative hearing where a facility had requested a variance from the requirement that the facility provide awake staff 24 hours a day. The Division also represents MDH when individuals or health care facilities have violated the Vulnerable Adults Act by neglecting, abusing, or financially exploiting vulnerable adults.

In addition, the Division also represents the Department of Labor and Industry (“DLI”) in proceedings to enforce occupational safety and health (“OSHA”) standards in the workplace. The Division handled cases involving the death or serious injury of workers where the employers

paid substantial penalties, including a case where a forklift operator backed over another worker and fatally injured that worker.

DEFENSE OF STATE EMPLOYEES AND PROGRAMS

The Division provided legal representation to defend the Department of Corrections (“DOC”) and its officials in lawsuits brought by incarcerated persons involving constitutional issues in state and federal court. Examples include constitutional challenges to policies and conditions of confinement in correctional facilities; challenges to alleged restrictions on religious practice under the First Amendment and the federal Religious Land Use and Institutionalized Persons Act; and claims alleging excessive force and wrongful incarceration. The Division also continued to defend the DOC in lawsuits where incarcerated persons brought claims related to exposure to COVID-19. The Division also defended decisions made by other state officials, including staff at the Department of Employment and Economic Development and the Bureau of Mediation Services. In FY2023, many cases against state officials were resolved through successful, early motions to dismiss the case.

HEALTH AND TEACHER LICENSING DIVISION

The Health and Teacher Licensing Division represents Minnesota’s health-related licensing boards, the Emergency Medical Services Regulatory Board, the Health Professionals Services Program, and the Professional Educator Licensing and Standards Board in litigation and administrative actions related to their licensure and regulatory oversight of healthcare providers and educators. The Division also investigates complaints received by the boards alleging licensee misconduct and provides legal advice to the boards.

Below is a *representative sample of some but not all* legal work performed by the Health and Teacher Licensing Division in FY 2023.

UNPROFESSIONAL CONDUCT

The Health and Teacher Licensing Division investigated and took action on complaints received by the boards against healthcare providers and educators who engaged in unprofessional conduct. The misconduct at issue in these cases involved healthcare providers or educators who violated professional boundaries, engaged in financial exploitation, used unreasonable force or discipline, and engaged in substandard practice. These cases resulted in board orders for discipline under rules and statutes that govern licensees, which are enforced by the Division and its clients to protect the public. In one case, for example, the Division represented the Board of Nursing in an investigation and contested case at the Office of Administrative Hearings involving a nurse who engaged in fraudulent and abusive Medicaid billing. The Board issued an order for revocation of the nurse’s license. In another case, the Division represented the Board of Dentistry in an investigation and contested case involving a dentist who engaged in substandard practice when placing dental implants that caused infections for multiple patients. The Board issued an order suspending the dentist’s license with requirements for training before he could return to practice subject to monitoring and other conditions and limitations. And in

another case, the Division represented the Professional Educator Licensing and Standards Board in an investigation and complaint-resolution process involving a teacher who used a racial slur in front of students, was late and unprepared for class, and made false statements to staff in connection with the performance of her teaching duties. The Board issued an order for revocation of the teacher's license.

SEXUAL MISCONDUCT

The Health and Teacher Licensing Division investigated and took action on complaints received by the boards against healthcare providers and educators who engaged in sexual misconduct. The misconduct at issue in these cases involved healthcare providers or educators who abused their position of authority to engage in inappropriate sexual relationships with patients or students. In one case, for example, the Division represented the Board of Medical Practice in an investigation and contested case at the Office of Administrative Hearings involving a physician who engaged in sexual misconduct toward multiple patients over several years. The Board issued an order revoking the physician's license after an evidentiary hearing before an administrative law judge. The Division defended the Board's order for revocation on appeal and it was affirmed by the Minnesota Court of Appeals. In another case, the Division represented the Board of Social Work in an investigation and contested case involving a social worker who sexually assaulted a client and threatened the client's relationship with her children. The Board issued an order revoking the social worker's license. And in another case, the Division represented the Professional Educator Licensing and Standards Board in an investigation and contested case involving a teacher who engaged in inappropriate physical contact with students and made comments of a sexual nature to students. The Board issued an order revoking the teacher's license.

UNAUTHORIZED PRACTICE

The Health and Teacher Licensing Division investigated and took action on complaints received by the health-related licensing boards involving the unauthorized practice of healthcare and violation of other laws governing public health and safety. The misconduct at issue in these cases involved individuals who failed to comply with laws governing their practice, practiced outside of the scope of their licensure, engaged in the unlicensed practice of healthcare, or violated laws protecting public health and safety. In one case for example, the Division represented the Board of Medical Practice in a civil action seeking injunctive relief against an individual engaged in the unlicensed practice of medicine through his offering of diagnostic and treatment services claiming to cure cancer. The Board obtained a court order barring him from the continued unlicensed practice of medicine. In another case, the Division represented the Board of Pharmacy in an investigation and contested case at the Office of Administrative Hearings involving compounding pharmacies that were engaged in substandard and dangerous mixing of drugs. The Board issued orders revoking their licenses and subsequently halting their unlicensed practice of pharmacy. And in another case, the Division represented the Board of Pharmacy in a civil action for injunctive relief against a company that manufactured and sold edible cannabinoid products that failed to meet testing requirements, were designed in a way that appealed to children, and were packaged in dosages that exceeded THC limits under Minnesota law. The Board obtained a court order for condemnation and destruction of the company's

noncompliant products and injunctive relief against further violations of Minnesota's edible cannabinoid laws.

HEALTH & SAFETY SECTION

MEDICAID FRAUD DIVISION

The Medicaid Fraud Division is a federally certified Medicaid Fraud Control Unit (“MFCU”) that investigates and prosecutes health care providers who commit fraud in the delivery of services in the Medical Assistance (“Medicaid”) program. Upon referral from a Minnesota county attorney, the Division also has authority to investigate and prosecute abuse, neglect, and financial-exploitation cases that occur in certain Medicaid-funded facilities, or against certain Medicaid recipients.

The Minnesota Department of Human Services (“DHS”) administers the Medicaid program in Minnesota. DHS’s Surveillance and Integrity Review Section (“SIRS”) is responsible for investigating fraud in the Medicaid program. After completing its administrative investigation, SIRS may refer cases to the Division for criminal investigation and prosecution. The Division also receives referrals from other sources, including but not limited to managed-care organizations, other state agencies, and other federal, state, and local law enforcement entities.

Most of the Division’s work involves investigating and prosecuting health-care providers who participate in the State’s Medicaid program and submit false claims for reimbursement. Typical fraud schemes include billing for services not provided, billing for authorized units rather than actual units of care provided, providing group care but billing as if one-on-one care is provided, and billing for services provided by individuals who are not qualified due to a prior conviction, a lack of credentials, or failure to pass background checks. Some fraud cases have a criminal neglect component because the recipient’s condition is compromised due to lack of care.

Below is a *representative sample of some but not all* cases prosecuted by the Medicaid Fraud Division in FY 2023.

- ***State of Minnesota v. Ladaphone Gonzalez, et al.*** In FY2023, the Division charged two former State employees and two other individuals with defrauding the Medicaid program and embezzling public funds. The State employees and their family members set up companies that they used to manipulate MNSure’s Minnesota Eligibility Technology Systems (“METS”) to falsify MNSure navigator enrollments for their own benefit. The defendants’ companies unlawfully obtained thousands of dollars in public funds based on the fraudulent manipulations.

The defendants are charged in Ramsey County district court. All have omnibus hearings scheduled for the fall of 2023.

- ***State of Minnesota v. Laci Silgjord.*** In FY2023, the Division investigated Laci Silgjord, a former Cloquet police officer, for financially exploiting a vulnerable adult. Silgjord met the vulnerable adult with significantly diminished capacity through her work as a Cloquet

police officer. The vulnerable adult passed away in October 2021. Approximately five months after she first met the victim, Silgjord attempted to inherit the vulnerable adult's entire estate despite the vulnerable adult having surviving family members.

The Division received a referral to prosecute this case from the Carlton County Attorney's Office, pursuant to Minn. Stat. § 8.01. It charged Silgjord with two felonies and one gross misdemeanor in July 2023. Her first appearance in Carlton County district court is scheduled for October 2023.

- ***State of Minnesota v. Abdikarim Mohamed, et al.*** In FY2023, the Division investigated the personal care assistance services agency MN Professional and its owners, managers, and employees. It found that the owners, Abdikarim Mohamed and Ahmed Nur, and managing employees bilked the Medicaid program out of over \$9 million. The owners, billers, and managers engaged in a complex scheme to defraud the program by billing for services not provided at all, and for services not supervised by any qualified professional as required by Minnesota law. They then concealed the proceeds of their crimes through an elaborate check-cashing scheme.

In August 2023, the Division charged twelve people as part of this scheme. Thus far in the investigation, nineteen people have been charged. Six have pled guilty. The defendants have hearings in the fall.

The Division also successfully resolved prior significant cases in FY2023. This included obtaining guilty pleas and sentences from:

- A network of individuals who defrauded the Medicaid program by billing for over \$1.4 million in personal care assistant services not provided;
- A separate collective that billed for over \$1.7 million in personal care assistant services not provided;
- A chiropractor who billed for over \$70,000 in interpreter services that he claimed to provide at his own clinic but were ineligible for payment;
- A mental health therapist who, along with fifteen other individuals, overbilled the Medicaid program by over \$1 million by billing for mental health, interpreter, and transportation services ineligible for payment.

PUBLIC SAFETY DIVISION

The Public Safety Division provides legal services to the Minnesota Department of Public Safety ("DPS") and its various divisions, including the Driver and Vehicle Services Division, the Minnesota Bureau of Criminal Apprehension, the Minnesota State Patrol, and the Alcohol and Gambling Enforcement Division.

The Division represents DPS at implied consent hearings where drivers contest the revocation of their driver's license for an arrest for driving while impaired by alcohol or controlled substances. Division attorneys handled over 3,300 district court proceedings and

associated appeals challenging the revocation, cancellation, withdrawal, and disqualification of driving privileges under various provisions of Minnesota law. Attorneys also represented the Driver and Vehicle Services Division in title matters and the Minnesota State Patrol in forfeiture proceedings in the district courts.

The Division also provides legal representation to state boards and commissions, including the Gambling Control Board and the Minnesota Racing Commission. These entities issue thousands of licenses and conduct numerous investigations each year. The Division provides legal representation to the Minnesota Racing Commission in appeals from commission licensing decisions and disciplinary action taken against horse owners, trainers, and jockeys, and has also provided legal representation to the commission at the Minnesota Court of Appeals. The Division also provides legal representation to the Gambling Control Board in appeals from the board's licensing decisions and disciplinary actions.

Below is a *representative sample of some but not all* legal work performed by the Public Safety Division in FY 2023.

- ***Brian Matthew Nash v. Commissioner of Public Safety.*** In this case, a trooper obtained a warrant for a blood or urine test. The trooper asked Mr. Nash if he would take a blood test and informed him that refusal to take a test is a crime. Mr. Nash consented to a blood test. Minnesota Statutes Section 171.177 requires that a “person must be informed that refusal to submit to a blood or urine test is a crime.” On appeal, Mr. Nash argued that the advisory given did not comply with the statute because the words “blood or urine” were omitted from the advisory. In *McCormick v. Comm’r of Pub. Safety*, a breath test case under section 169A.53, the Court of Appeals held that a verbatim reading of the statute is not required for the advisory to comply with the statute; all that is required is that the driver be informed of the consequences of test refusal. 945 N.W.2d 55, 60 (Minn. Ct. App. 2020). In a published opinion on May 1, 2023, the Court of Appeals agreed that *McCormick* applies, but found that the advisory did not accurately inform the Appellant of the consequences of test refusal as the advisory did not contain any information about the option to take a urine test and remanded to the district court. The Office submitted a Petition for Review (“PFR”) to the Supreme Court that was granted on July 18, 2023.
- ***Jacob Jeffrey Leidner v. Minnesota Commissioner of Public Safety, and Jacob Jeffrey Leidner v. Commissioner of Public Safety.*** Mr. Leidner brought a civil declaratory judgment action arguing that Minnesota Statutes section 171.187, subd. 1, which allows for the revocation of a driver’s license when a person is arrested or charged with criminal vehicular operation, is unconstitutional because it fails to provide appropriate hardship relief. Mr. Leidner also filed a Petition pursuant to Minnesota Statutes section 171.19. The parties agreed that the Petition pursuant to Minnesota Statutes section 171.19 would track the declaratory judgment matter which may be dispositive. A hearing on the parties’ cross motions for summary judgment was held on July 7, 2023, in Scott County District Court. The matter is currently pending.

TRANSPORTATION DIVISION

The Transportation Division provides legal representation to the Minnesota Department of Transportation (“MnDOT”). A large part of the Division’s work involves eminent-domain litigation. In addition, the Division provides legal advice to MnDOT, other state agencies, and the National Guard involved in construction projects and provides legal representation to those entities when contractors, subcontractors, or third parties sue on construction-related matters. The Division also protects taxpayers by filing claims on behalf of MnDOT and other State agencies against entities that make false claims, 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. The Division advocates in the appellate courts on behalf of its client agencies. The Division also assists in the representation of other state agencies in conflict cases and cases where its expertise is sought.

Below is a *representative sample of some but not all* legal work performed by the Transportation Division in FY 2023.

- ***Eminent Domain/Land Acquisition Matters on behalf of the Department of Transportation.*** The Division is representing MnDOT in the acquisition of over 650 parcels that are necessary for infrastructure improvements to Minnesota’s Trunk Highway System. Division attorneys protect the public interest in these special proceedings by ensuring that MnDOT has the necessary right-of-way to improve and build new roads and bridges throughout the entire state, including for example, improvements to I-494 from the Minneapolis–Saint Paul Airport to Trunk Highway 169, the Highway 23 four-lane expansion in central Minnesota, and the completion of the four-lane expansion of the Trunk Highway 14 corridor. Trunk Highway right-of-way acquired by and through this work is used to facilitate construction of vital municipal utility improvement projects, such as upgrading outdated sewer and water infrastructure, in communities throughout the state. These cases, integral to the timely completion of these construction projects, make Minnesota’s highway system safer and more efficient, and implicate the powers and protections of the Minnesota and U.S. Constitutions. Division attorneys work to carry out these constitutional provisions to ensure the compensation paid for land necessary for these vital improvements is just to both the affected landowners and the public that funds the projects.
- ***Wood, et al., v. County of Blue Earth.*** The Division filed an amicus brief on behalf of the Department of Transportation at the Minnesota Supreme Court in a case concerning the establishment of controlled-access highways in eminent domain cases. Specifically, the court held that an owner of property abutting a newly constructed controlled-access highway does not have a property right of access that is compensable under Minnesota law. The decision provides important guidance for future claims in eminent domain proceedings. *See Wood, et al., v. County of Blue Earth*, A22-0314 (Minn. 2023).

- ***Poly Carb, Inc.*** The Division represented MnDOT in a False Claims Act investigation it conducted along with U.S. Department of Transportation. Dow Chemical Co. agreed to pay for alleged violations by its former subsidiary, Poly Carb, Inc., of the federal False Claims Act and the Minnesota False Claims Act. The allegations included that Poly Carb, Inc. falsified enamel product-testing results in connection with several road construction projects administered by MnDOT. In coordination with the U.S. Attorney's Office, the Division successfully negotiated a settlement that resulted in the payment of almost \$200,000 to the State, thus advancing the State's efforts in keeping its projects free from fraud and waste.

CRIMINAL DIVISION

2023 LEGISLATIVE CHANGE UPDATE

The legislature provided funding for 9 new FTEs in the Criminal Division. All 9 positions have been filled. The additional staff will allow for increased criminal prosecution assistance to county attorneys throughout the state.

The Criminal Division provides prosecutorial assistance to county attorneys and local law enforcement agencies in prosecuting serious crimes. The Division assists counties in the prosecution of serious crimes in trial courts throughout Minnesota when a county attorney requests under Minnesota Statutes section 8.01. Division attorneys also provide assistance to county attorneys in civil commitment proceedings involving dangerous sex offenders, upon the request of the county attorney.

The Division's attorneys also assist the Department of Corrections in 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. The Division also advises the Bureau of Criminal Apprehension ("BCA") in registration and DNA collection issues, advises the Department of Corrections on community-notification issues, and provides legal assistance to the Advisory Committee on the Rules of Criminal Procedure and, previously, the Rules of Civil Commitment.

The Division also provides assistance to county attorneys in felony appeals. The cases handled in FY 2023 involved, among other crimes, murder, sexual assault, drug distribution and manufacturing, child sexual abuse, arson, and distribution of child pornography.

Below is a *representative sample of some but not all* cases prosecuted by the Criminal Division in FY 2023.

- ***State of Minnesota v. Ralph Apmann*** (Cottonwood County). Apmann strangled a man behind a local bar in Windom and left him to die in August 2021. Apmann was charged with second-degree felony murder and trial occurred in February 2023. After 5 days of trial, Apmann absconded, and the jury subsequently found him guilty in absentia. Apmann was later found deceased in a homeless encampment in Minneapolis.

- ***State of Minnesota v. Derek Chauvin; J. Alexander Kueng; Thomas Lane; Tou Thao*** (Hennepin County). On May 25, 2020, Minneapolis police officers killed George Floyd by restraining him on the pavement in the prone position, with his hands cuffed behind his back. Chauvin pressed his knees into Floyd's neck and back for over nine minutes, while Kueng knelt on Floyd's back and held his arms, and Lane restrained Floyd's legs. Thao encouraged the restraint, mocked Floyd's condition, and prevented bystanders from rendering aid as Floyd fell unconscious, stopped breathing, and died. In April 2021, a jury convicted Chauvin on all counts at trial, including second-degree murder, and the district court sentenced Chauvin to 270 months' imprisonment. On May 18, 2022, Lane pled guilty to aiding and abetting second-degree manslaughter and was sentenced to 36 months' imprisonment in September 2022. On October 24, 2022 (the day a jury trial was scheduled to commence for Kueng and Thao), Kueng pled guilty to aiding and abetting second-degree manslaughter and was later sentenced to 42 months in prison. The same day, Thao agreed to a stipulated evidence trial on the charge of aiding and abetting second-degree manslaughter. On May 2, 2023, Thao was convicted of that offense by the district court and was sentenced to 57 months in prison on August 7, 2023.
- ***State of Minnesota v. Neil Dolan*** (Clearwater County). Following Dolan's 2021 plea and sentencing in three criminal sexual conduct cases (two in Clearwater County and one in Becker County), three new cases were filed in Clearwater County arising from offenses committed against three additional juvenile victims during the time Dolan was employed as a Clearwater County Sheriff's Deputy and School Resource Officer in Bagley. Dolan pled guilty to conduct against each victim, including two counts of first-degree criminal sexual conduct, and was sentenced on May 10, 2023, to 360 months' imprisonment (the statutory maximum).
- ***State of Minnesota v. Tommi Hintz; Jacob Johnson; Robert West*** (Cook County). On June 20, 2021, Ricky Balsimo was reported missing. On July 14, 2021, a portion of his dismembered body was recovered from Lake Superior encased in cement-filled containers in Grand Portage Bay. Subsequent investigation discovered that he had been shot by Johnson in the Twin Cities area, and was then transported to Superior, Wisconsin, where West assisted Johnson in dismembering the body. West then transported the body to Grand Portage and disposed of the remains. Hintz assisted in locating a boat captain for disposal of the body and facilitated the transfer of the firearm used in the shooting to West, who disposed of the firearm. Hintz pled guilty to aiding an offender. A jury convicted West of aiding an offender at trial in January 2023. In July 2023, another jury convicted Johnson of second-degree intentional murder. On August 29, 2023, the district court sentenced Hintz to 48 months' probation (with several months to serve in jail), and sentenced West to 180 months in prison, pursuant to cooperation agreements. On September 11, 2023, the court sentenced Johnson to 480 months in prison, the statutory maximum.
- ***State of Minnesota v. Jackson Johnson*** (Kanabec County). On February 11, 2022, Johnson strangled his girlfriend at a hotel in Mora, killing her. He fled the scene partially clothed and was apprehended after breaking into a friend's trailer home a short distance away. Johnson had a significant history of domestic assaults. Johnson was indicted for

first-degree domestic abuse murder and second-degree intentional murder. Johnson pled guilty to second-degree intentional murder and was sentenced to 439 months in prison.

- ***State of Minnesota v. Janelle Johnson*** (Beltrami County). On December 25, 2020, Johnson and her husband left a Christmas party to confront her brother-in-law about domestic abuse allegations against her sister. In a confrontation outside his home, Johnson shot her brother-in-law as he was running away through the yard. Johnson later called police and confessed to the shooting. Johnson was convicted of second-degree intentional murder by a jury following a trial in March 2023. The district court sentenced Johnson to 343 months in prison.
- ***State of Minnesota v. Houston Morris*** (Renville County). On March 24, 2022, while assaulting his girlfriend with a knife, Morris stabbed his girlfriend's 13-year-old son, killing him. Morris pled guilty to second-degree felony murder for the stabbing death of the child and second-degree assault for the conduct against his girlfriend. The district court imposed consecutive sentences, and Morris received a total of 201 months' imprisonment.
- ***State of Minnesota v. Eric Reinbold*** (Pennington County). Reinbold murdered his wife and left her body for two of her children to find in July 2021. Reinbold eluded law enforcement, including U.S. Marshals, for almost a month. A jury found Reinbold guilty following a trial in September 2022. Reinbold was convicted of second-degree murder and received a 480-month prison sentence.
- ***State of Minnesota v. Harold Wassather*** (Morrison County). Wassather beat his girlfriend to death in March 2022. Wassather was indicted on charges of first- and second-degree murder. Wassather pled guilty to second-degree murder and received a 480-month prison sentence.
- ***State of Minnesota v. Devin Weiland*** (Freeborn County). In the early morning hours of November 29, 2020, Weiland called 911 and reported a shots-fired incident. When an Albert Lea squad arrived to investigate, Weiland opened fire on the squad from his apartment, striking the officer in the chest. The officer, who was wearing a bullet-proof vest, survived. Over 100 officers responded from across the area in the 8 hours that followed, during which Weiland shot two civilians and fired over 90 rounds of ammunition. Weiland was ultimately charged with three counts of attempted first-degree murder, including attempted murder of a police officer. A jury trial was held in September 2022, and Weiland was convicted of all counts. He was sentenced to three consecutive sentences of 200 months, for a total sentence of 600 months in prison.
- ***State of Minnesota v. Hardy Wills-Traxler*** (LeSueur County). On January 24, 2021, a structure fire was reported on a property where Wills-Traxler lived with his father. When the fire was extinguished, the body of Wills-Traxler's father was recovered from the rubble, and a subsequent autopsy showed that he had been stabbed prior to being burned. Wills-Traxler was arrested shortly thereafter and confessed to stabbing his father.

Will-Traxler pled guilty to second-degree intentional murder, and the district court sentenced him to 306 months in prison.

POSTCONVICTION JUSTICE DIVISION

The Postconviction Justice Division was created to carry out two important initiatives to seek justice for persons who have been wrongly convicted of crimes in the past. First, the Division's Conviction Review Unit ("CRU") seeks to identify cases in which a wrongful conviction may have occurred. Second, the Division also seeks to mitigate the collateral consequences of past criminal convictions for persons who have served their sentences and rehabilitated themselves through the Attorney General's Office Statewide Expungement Program ("SWEP").

2023 LEGISLATIVE CHANGE UPDATE

The Legislature provided additional funding for FY 2023 for two additional attorneys that have been hired. These new resources will allow the Division to hasten its review of applications in both the CRU and SWEP. The new attorneys allow the Division to increase the number of investigations of innocence claims as well as the number of local prosecutors it can assist in obtaining expungement orders. The Postconviction Justice Division houses Minnesota's first-ever CRU, which is an independent unit in the Attorney General's Office with a mission to identify, remedy, and prevent wrongful convictions. Most CRUs throughout the country are housed in the office of a single-jurisdiction prosecutor, like a district attorney or a county attorney. Minnesota is one of several states that have developed a statewide CRU, providing applicants from any county in the state an opportunity for case review.

Below is a *representative sample of some but not all* legal work performed by the Postconviction Justice Division in FY 2023.

The CRU has an application process to allow persons with a credible claim of actual innocence to request review of a conviction. For cases accepted for review, the CRU will conduct a comprehensive and non-adversarial review of the evidence in the case, in cooperation with both the applicant's counsel and the prosecuting attorney. The CRU review is an extrajudicial process, meaning it occurs outside of the court system. The CRU operates independently from the prosecutors that obtained the conviction in the first place, and from the other prosecutors in the Criminal Division within the Office. The CRU has an Advisory Board consisting of prosecutors, defense attorneys, members of law enforcement, criminal law experts, criminal justice stakeholders, and community members.

In cases where the CRU concludes there was a wrongful conviction, the CRU will work cooperatively to seek remedial measures necessary to correct injustices uncovered. The CRU will also study and collect data on the causes of wrongful convictions in order to shape policies and procedures to prevent them from occurring in the future.

Since its inception, the CRU has received over 1,000 applications for assistance. With the assistance of law-school externs from eight different law schools, the CRU has screened applications and prioritized case reviews in a timely manner. Currently, the CRU has a dozen applications under investigation.

In early 2023, the CRU recommended a correction in Thomas Rhodes's 1998 conviction for first-degree premeditated murder. Mr. Rhodes was charged after his wife drowned in Green Lake, Kandiyohi County. The CRU investigation found evidence that the medical examiner, Dr. Michael McGee, offered improper and unsupported opinions when he testified that Mr. Rhodes forcibly threw his wife into the lake and then struck her more than once with their boat. The CRU was also aware that Dr. McGee had been cited by judges in at least three prior cases for providing false and inaccurate testimony that led to wrongful convictions. After a 16-month investigation, the CRU recommended that Mr. Rhodes's first-degree murder conviction be vacated. In January 2023, Mr. Rhodes pled guilty to the lesser offense of involuntary manslaughter for negligently operating the boat from which his wife fell. After Mr. Rhodes's release from prison, the CRU began a systematic review of all cases in which the Attorney General's Office used Dr. McGee as an expert to secure a homicide conviction. This review is ongoing.

The Division's Statewide Expungement Program was implemented to assist local prosecutors who decide to apply to the district court for expungement of certain criminal records of eligible applicants who have satisfied the conditions of the Minnesota Expungement law set forth in Chapter 609A. The SWEP recognizes that for many people who have been convicted of crimes, criminal records can hamper their efforts to improve their prospects for jobs, housing, and education long after they have atoned for their crimes. To mitigate collateral consequences of convictions for people who have since rehabilitated themselves, the Division created a website where qualifying individuals can request that their records be sealed so they no longer appear on background checks.

To apply for assistance, applicants may submit their application via the website, [Helpsealmyrecords.org](https://helpsealmyrecords.org). Division staff review applications for sealing records, determine eligibility under state law, and for those that qualify, work cooperatively with interested prosecutors across the state to prepare court filings. Under this program, because requests to seal records are filed by prosecutors who have decided to ask the district court for an expungement order rather than the applicants, applicants avoid expensive court filing fees and confusing forms that are difficult to navigate for non-lawyers. To date, the Division has helped local prosecutors obtain expungement orders in approximately 450 cases.

APPENDIX A: SERVICE HOURS				
By Agency or Political Subdivision for FY 2023				
Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
Partner Agencies				
Administration--Risk Management		61.1		\$ 8,387.90
AURI		0.0		\$ -
Corrections (3)		4,050.0	\$ 599,400.00	\$ 599,400.00
Education Department		4,874.3		\$ 719,331.40
Environmental Quality Board		148.3		\$ 21,470.50
Gambling Control Board		353.3		\$ 52,288.40
Health		4,436.9		\$ 648,053.10
Housing Finance Authority (3)		1,497.0		\$ 221,296.40
Human Services		27,570.4		\$ 3,931,066.60
Iron Range Resources & Rehabilitation		63.4		\$ 9,383.20
Labor and Industry Department (3)		2,986.2		\$ 441,308.60
Lottery		0.0		\$ -
Medical Practice Board		4,272.2	\$ 1,000,000.00	\$ 550,741.70
Metropolitan Council		500.3		\$ 72,610.70
Minnesota Racing Commission		19.5		\$ 2,886.00
Minnesota State Retirement System		137.3		\$ 20,320.40
Minnesota State		5,371.2		\$ 753,714.30
MNsure		1.0		\$ 148.00
Natural Resources		3,911.9		\$ 570,100.30
Petroleum Tank Release Compensation Board		16.8		\$ 2,486.40
Pollution Control		5,721.0		\$ 735,057.90
Public Employees Retirement Association		55.0		\$ 8,140.00
Public Safety (3)		11,084.3		\$ 1,420,831.20
Revenue (3)	3,440.0	3,440.0		\$ 509,120.00
Teachers Retirement Association		156.6		\$ 23,176.80
Transportation		8,615.7		\$ 1,266,860.70
TOTAL PARTNER AGENCIES	3,440.0	89,343.7	\$ 1,599,400.00	\$ 12,588,180.50
Health Boards/Offices				
Behavioral Health & Therapy Board		1,839.0		\$ 213,236.90
Board of Executives for Long Term Services & Supports		303.4		\$ 38,307.00
Chiropractic Board		761.7		\$ 85,568.00
Dentistry Board		950.9		\$ 117,192.20
Dietetics & Nutrition Practice Board		6.2		\$ 917.60
Emergency Medical Services Regulatory Board		600.3		\$ 88,844.40
Health Professionals Services Program		23.7		\$ 3,507.60
Licensed Drug & Alcohol Counselor Program		2,370.1		\$ 254,085.60
Marriage & Family Therapy Board		656.0		\$ 70,555.70
Nursing Board		6,727.9		\$ 853,315.00
Occupational Therapy Board		55.2		\$ 8,169.60
Optometry Board		86.7		\$ 10,371.30
Pharmacy Board		2,092.8		\$ 301,787.10
Physical Therapy Board		471.1		\$ 56,087.90
Podiatry Board		80.5		\$ 11,914.00
Psychology Board		1,059.4		\$ 121,774.70
Social Work Board		1,933.6		\$ 218,901.00
Veterinary Medicine Board		358.0		\$ 44,676.80
SUBTOTAL		20,376.5		\$ 2,499,212.40
Other State Agencies/Political Subdivisions				
Accountancy Board		467.3		\$ 69,160.40
Administration Department		556.9		\$ 82,421.20

Administrative Hearings Office	71.2	\$ 10,537.60
Agriculture Department	437.2	\$ 60,310.10
Agriculture Chemical Response Compensation Board	9.9	\$ 1,465.20
Amateur Sports Commission	1.3	\$ 192.40
Animal Health Board	149.7	\$ 22,155.60
Architecture Board	211.0	\$ 31,228.00
Barber Board	148.4	\$ 21,963.20
Board on Aging	22.2	\$ 3,285.60
Campaign Finance Board	332.4	\$ 48,487.20
Capitol Area Architectural Planning Board	42.0	\$ 6,216.00
Center for Arts Education	73.8	\$ 10,922.40
Client Security Board	53.8	\$ 7,962.40
Commerce Department	7,371.6	\$ 1,088,548.30
Commission Serving Deaf and Hard of Hearing	11.8	\$ 1,746.40
Corrections Department (3)	2,320.2	\$ 316,550.50
Corrections Department/Community Notification	1,342.7	\$ 165,915.60
Cosmetology Examiners Board	360.0	\$ 51,816.80
Council on Latino Affairs	1.3	\$ 192.40
Crime Victims Reparations Board	83.8	\$ 11,812.40
Disability Council	4.6	\$ 680.80
Employment & Economic Development Department	475.1	\$ 70,255.80
Explore Minnesota Tourism	9.2	\$ 1,361.60
Firefighter Training & Education Board	69.7	\$ 10,315.60
Governor's Office	700.2	\$ 101,741.60
Higher Education Facilities Authority	0.3	\$ 44.40
Human Rights Department	1,727.3	\$ 251,227.20
Indian Affairs Council	30.3	\$ 4,484.40
Judiciary Courts	579.9	\$ 83,954.90
Labor and Industry Department (3)	1,224.8	\$ 181,122.90
Land Exchange Board	14.4	\$ 2,131.20
Law Examiner's Board	99.5	\$ 14,655.20
Lawyers Professional Responsibility Board	1.3	\$ 192.40
Legislature	45.7	\$ 6,716.40
Legislature Auditor's Office	5.5	\$ 814.00
Mediation Services Bureau	449.8	\$ 65,301.90
Military Affairs Department	113.2	\$ 16,399.60
Minnesota Management & Budget	984.7	\$ 144,791.60
Minnesota Rare Disease Advisory Council	27.2	\$ 4,025.60
Minnesota State Academies	10.2	\$ 1,509.60
MN.IT Services Office	602.0	\$ 77,148.50
Office of Higher Education	165.3	\$ 24,434.90
Ombudsman for Long Term Care	4.4	\$ 651.20
Ombudsman for Mental Health & Developmental Disabilities	32.4	\$ 4,795.20
Ombudsperson for Corrections	1.5	\$ 222.00
Ombudsperson for Family Child Care Providers	5.0	\$ 740.00
Peace Officers Standards and Training Board	1,607.4	\$ 229,664.70
Private Detective Board	198.2	\$ 29,333.60
Professional Educator Licensing & Standards Board	1,309.6	\$ 193,750.00
Public Defender, Local	185.3	\$ 26,598.40
Public Facilities Authority	14.8	\$ 2,190.40
Public Safety Department (3)	20,332.4	\$ 2,686,848.70
Public Utilities Commission	2,958.4	\$ 436,179.40
Revenue Department (3)	988.6	\$ 146,253.80
Rural Finance Authority	53.9	\$ 7,977.20
School Administrators Board	109.0	\$ 16,132.00
Secretary of State	1,797.0	\$ 263,832.00
State Advisory Council on Mental Health	13.1	\$ 1,938.80
State Arts Board	0.6	\$ 88.80
State Auditor	2.4	\$ 355.20

State Fair Board		3.1	\$	458.80
State Guardian Ad Litem Board		83.4	\$	11,971.50
State Investment Board		139.7	\$	20,675.60
Veterans Affairs Department		346.0	\$	50,110.60
Veterans Homes		787.1	\$	109,340.00
Water & Soil Resources Board		319.7	\$	45,107.60
Zoological Board		49.8	\$	7,199.30
SUBTOTAL		52,751.5	\$	7,368,614.60
Medicaid Fraud Control Unit Investigations and Prosecutions				
Aitkin County Attorney		360.7	\$	38,533.30
Anoka County Attorney		1,266.6	\$	156,782.70
Carlton County Attorney		242.9	\$	31,701.20
Carver County Attorney		0.8	\$	71.20
Chisago County Attorney		570.5	\$	74,120.80
Cottonwood County Attorney		2.1	\$	281.30
Crow Wing County Attorney		72.4	\$	7,293.20
Dakota County Attorney		600.6	\$	58,964.00
Goodhue County Attorney		122.5	\$	11,793.40
Hennepin County Attorney		19,056.1	\$	1,959,693.40
Isanti County Attorney		577.4	\$	52,096.60
Kandiyohi County Attorney		202.2	\$	19,818.90
McLeod County Attorney		84.7	\$	8,092.90
Nobles County Attorney		14.7	\$	2,175.60
Olmsted County Attorney		284.9	\$	28,229.40
Polk County Attorney		302.8	\$	28,483.20
Ramsey County Attorney		6,746.7	\$	679,770.00
Rice County Attorney		1,951.4	\$	196,088.70
Stearns County Attorney		58.0	\$	5,162.00
Steele County Attorney		306.9	\$	30,069.40
Washington County Attorney		199.0	\$	18,153.50
Winona County Attorney		408.5	\$	50,274.60
Wright County Attorney		11.0	\$	1,321.20
SUBTOTAL		33,443.4	\$	3,458,970.50
Other Local Government Assistance				
Aitkin County Attorney		3.5	\$	341.00
Becker County Attorney		455.8	\$	65,658.90
Beltrami County Attorney		617.5	\$	75,855.30
Benton County Attorney		886.7	\$	114,534.60
Big Stone County Attorney		273.0	\$	34,415.50
Blue Earth County Attorney		326.6	\$	47,994.60
Brown County Attorney		14.9	\$	2,146.20
Carlton County Attorney		457.1	\$	67,208.30
Carver County Attorney		22.5	\$	2,061.50
Cass County Attorney		183.0	\$	21,980.50
Chippewa County Attorney		752.6	\$	94,982.80
Chisago County Attorney		10.4	\$	1,008.20
Clay County Attorney		283.6	\$	37,465.20
Clearwater County Attorney		506.3	\$	71,679.30
Cook County Attorney		1,349.2	\$	165,373.10
Cottonwood County Attorney		532.8	\$	69,479.30
Crow Wing County Attorney		331.5	\$	38,825.50
Dodge County Attorney		100.2	\$	14,505.10
Douglas County Attorney		67.3	\$	9,960.40
Faribault County Attorney		55.6	\$	8,075.40
Freeborn County Attorney		939.1	\$	116,366.20
Goodhue County Attorney		78.1	\$	11,499.80
Grant County Attorney		0.7	\$	103.60

Hennepin County Attorney		3,132.5	\$ 425,968.00
Isanti County Attorney		137.5	\$ 20,350.00
Itasca County Attorney		42.0	\$ 6,216.00
Jackson County Attorney		145.8	\$ 21,489.90
Kanabec County Attorney		869.0	\$ 103,997.20
Kandiyohi County Attorney		228.0	\$ 27,578.50
Koochiching County Attorney		71.2	\$ 8,466.70
Le Sueur County Attorney		212.8	\$ 25,747.80
Lyon County Attorney		146.1	\$ 19,274.60
Martin County Attorney		19.0	\$ 1,750.00
Meeker County Attorney		68.2	\$ 9,975.60
Mille Lacs County Attorney		526.0	\$ 68,880.00
Morrison County Attorney		415.0	\$ 49,820.60
Mower County Attorney		801.2	\$ 103,237.60
Nobles County Attorney		247.5	\$ 28,635.50
Otter Tail County Attorney		428.3	\$ 61,293.90
Pennington County Attorney		1,008.5	\$ 130,909.00
Pine County Attorney		496.8	\$ 66,416.90
Pipestone County Attorney		96.9	\$ 14,016.70
Pope County Attorney		249.7	\$ 32,589.60
Ramsey County Attorney		51.9	\$ 7,681.20
Renville County Attorney		1,010.6	\$ 124,080.80
Rice County Attorney		303.0	\$ 35,964.50
Scott County Attorney		228.0	\$ 28,139.00
Sherburne County Attorney		6.0	\$ 888.00
St. Louis County Attorney		499.5	\$ 73,861.10
Stearns County Attorney		1,137.0	\$ 167,455.90
Steele County Attorney		373.2	\$ 46,649.10
Stevens County Attorney		33.9	\$ 4,633.70
Traverse County Attorney		4.3	\$ 636.40
Wabasha County Attorney		5.8	\$ 858.40
Wadena County Attorney		285.9	\$ 31,415.90
Waseca County Attorney		221.0	\$ 32,194.70
Watsonwan County Attorney		75.4	\$ 11,159.20
Wilkin County Attorney		56.4	\$ 8,317.70
Wright County Attorney		603.0	\$ 77,680.00
Yellow Medicine County Attorney		87.5	\$ 12,950.00
Association of County Attorneys		3.5	\$ 518.00
SUBTOTAL		22,575.9	\$ 2,963,218.00
TOTAL PARTNER/SEMI-PARTNER AGENCIES (from page A-1)		89,343.7	\$ 12,588,180.50
TOTAL NON-PARTNER AGENCIES SUBDIVISIONS		129,147.3	\$ 16,290,015.50
GRAND TOTAL HOURS/EXPENDITURES		218,491.0	\$ 28,878,196.00
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 \$148.00, Attorney Fellowship \$56.00, and Legal Assistant \$89.00.			
(3) A number of agencies signed agreements for a portion of their legal services.			

**APPENDIX B: SPECIAL ATTORNEY EXPENDITURES
FOR FY 2023, BY AGENCY/POLITICAL SUBDIVISION**

AGENCY/POLITICAL SUBDIVISION	Amount
Administration	\$ 912,526.17
Attorney General	\$ 49,679.75
Education	\$ 63,759.15
Lottery	\$ 2,635.00
Natural Resources	\$ 36,808.00
Minnesota Management & Budget	\$ 153,157.65
Minnesota State Retirement System	\$ 12,618.00
Public Employees Retirement Association	\$ 26,095.50
Teachers Retirement Association	\$ 13,437.00

Notes:

(1) A portion of certain Attorney General costs were reimbursed by Hennepin County.

**APPENDIX B: SPECIAL ATTORNEY EXPENDITURES
BOND COUNSEL FOR FY 2023, BY AGENCY/POLITICAL SUBDIVISION**

AGENCY/POLITICAL SUBDIVISION	Amount
Higher Education Facilities Authority	\$ 125,378.21
Higher Education, Office of	\$ 119,765.01
Housing Finance Authority	\$ 215,564.02
Minnesota Management & Budget	\$ 179,514.62
Minnesota State	\$ 495.00

Note: Certain bond fund counsel are paid from proceeds.