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

ANNUAL REPORT REQUIRED BY

**Minnesota Statute Section 8.15
Subdivision 4 (2014)**

Fiscal Year 2015

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INTRODUCTION

This report is intended to fulfill the requirements of Minnesota Statutes Section 8.15, Subdivision 4, for Fiscal Year 2015 (FY 2015).

The Attorney General's Office (AGO) is organized into six sections under the direction of deputy attorneys general: Administrative Law, Solicitor General, Residential Utilities and Antitrust, State Services, Public Services and Regulatory Law. This report contains brief summaries of the services provided to state agencies and other AGO constituencies by these sections.

ADMINISTRATIVE LAW

HEALTH, LABOR, CORRECTIONS, AND ADMINISTRATIVE LAW DIVISION

The Health, Labor, Corrections, and Administrative Law 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.

DEPARTMENT OF CORRECTIONS

Provided a broad range of legal services to the Department of Corrections (DOC) and state correctional facilities. Defended lawsuits brought by inmates against the DOC involving complex constitutional issues. Examples of current and recent litigation include:

- ***Hepatitis C Litigation.*** Division staff are currently defending the DOC in lawsuits brought by prisoners who allege that the DOC is inadequately treating Hepatitis C.
- ***Defense of Prison Employees.*** Division staff defended prison employees when an inmate alleged that they had failed to protect him from assault by other inmates. The federal district court dismissed the case and the Eighth Circuit Court of Appeals affirmed.
- ***DOC Sentence Administration.*** Division staff filed a brief on behalf of the DOC before the Minnesota Supreme Court to defend the DOC's method of calculating the length of a sex offender's conditional release period in a case where the offender brought the challenge in the wrong forum and where the DOC was not a party to the litigation. The supreme court agreed with DOC's position and held that a motion to correct a sentence was the wrong procedure to challenge the DOC's administration of an offender's sentence in *State v. Schnagl*, 859 N.W.2d 297, 303 (Minn. 2015). Division staff also defended the DOC at the Minnesota Court of Appeals in habeas corpus cases brought by offenders who challenged the DOC's calculation of their sentence expiration date, extension of incarceration, revocation of release, and imposition of prison discipline.

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

Provided legal representation to the Minnesota Department of Employment and Economic Development (DEED) and participated in bankruptcy proceedings in order to protect the State's interest in collecting unemployment benefits overpayments. In FY15, cases brought by this Office prevented the discharge in bankruptcy of more than \$1.8 million of improperly received benefits.

DEPARTMENT OF HEALTH

The Minnesota Department of Health (MDH) has authority to regulate and oversee a number of different subject areas, including infectious diseases, food-borne illness outbreaks, health care facilities, environmental health hazards, health maintenance organizations (HMOs)

and certain health professionals. Provided legal representation to MDH concerning its regulatory responsibilities and in litigation and administrative enforcement actions.

Specific examples of the division's work for the MDH in FY 2015 include the following:

- ***Nursing Home Receivership.*** MDH staff determined that an emergency situation existed at two nursing homes because the facilities' precarious financial condition placed the residents at risk for lack of continuing and appropriate supervision and medical supplies to maintain their health and safety. Division staff filed an emergency receivership petition on MDH's behalf asking the Ramsey County District Court to allow MDH's managing agent to assume control of the nursing homes. The court granted the emergency petition and a subsequent permanent order of receivership.
- ***Infectious Disease.*** Division staff petitioned the court on MDH's behalf to seek an order allowing a hospital to hold a patient who was refusing treatment for Tuberculosis, which is a highly infectious disease. The court granted MDH's petition after an emergency evidentiary hearing.
- ***Asbestos Contamination.*** Division staff represented MDH in actions to revoke licenses of companies that fail to comply with the Minnesota Asbestos Abatement Act and Rules.
- ***X-Ray/Radiation Laws.*** The Division represented MDH in enforcing laws regulating radiation and x-ray equipment. For instance, the division brought a proceeding against a chiropractic clinic that failed to properly maintain its x-ray equipment in violation of Minnesota law.
- ***Food, Beverage, and Lodging Establishments.*** The Division represented MDH in enforcement proceedings against restaurants, hotels, and manufactured home parks. For instance, two restaurants were ordered to close for repeated serious violations of the Minnesota Food Code and were ordered to pay \$10,000 administrative penalties. And an unlicensed caterer was ordered to pay a \$10,000 administrative penalty after serving food that caused at least twenty-two Minnesota customers to become ill.
- ***Funeral Homes.*** The Division represented MDH in an administrative proceeding against a funeral home that failed to maintain its embalming room in a sanitary manner.
- ***Body Art Technicians and Body Art Establishments.*** The Division represented MDH in enforcement proceedings against unlicensed body art technicians and unlicensed body art establishments for not meeting the minimum licensure requirements.

A significant amount of work in FY 2015 involved providing legal defense of MDH's determinations that individuals or health care facilities violated the Vulnerable Adults Act by neglecting, abusing, or financially exploiting vulnerable adults. In addition, the division provided legal defense of MDH decisions not to allow certain disqualified individuals to work in direct contact with patients or residents of health care facilities or health care service organizations (such as home care agencies). Examples of these types of cases include:

- ***Sexual Abuse of a Vulnerable Adult.*** The Division represented MDH staff in a case in which a health care worker was found responsible for sexually abusing a vulnerable

resident of care facility. After an evidentiary hearing, the finding of sexual abuse was sustained.

- ***Maltreatment of a Vulnerable Adult.*** The Division represented MDH staff in an administrative proceeding after MDH staff determined that a staff person at a group home had physically abused and injured a resident. The finding of maltreatment was sustained.
- ***Disqualification Appeal.*** The Division represented MDH in a case in which a health care worker was disqualified based on a preponderance of evidence that he committed an act that meets the definition of fifth-degree sexual assault. The Minnesota Court of Appeals affirmed the disqualification.

DEPARTMENT OF HUMAN RIGHTS

Provide legal representation to the Department of Human Rights (MDHR) following MDHR's determination that there is probable cause to believe that illegal discriminatory conduct has occurred. For instance, Division staff represented MDHR in a lawsuit alleging that an employer discriminated against its former employee by harassing her because of her sex and causing her to quit. The case settled with the former employee receiving damages and the former employer agreeing to change its policies and to train employees.

DEPARTMENT OF LABOR AND INDUSTRY

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

- ***OSHA Enforcement Action to Enforce Minnesota's Indoor Heating Standard.*** The OSHA Review Board issued a final decision ordering an employer to heat indoor work areas in conformity with the applicable standard. When the employer refused to comply with the order, Division staff represented DLI in an enforcement action in Ramsey County District Court. The district court issued a permanent injunction regarding all of employer's Minnesota distribution centers. The Minnesota Court of Appeals upheld the injunction in *Peterson v. United Parcel Service, Inc.*, Nos. A13-2378, A14-0467, 2014 WL 4672393 (Minn. Ct. App. Sept. 22, 2014) and the Minnesota Supreme Court denied further review.
- ***OSHA Enforcement Action to Regarding Fall Protection.*** DLI staff cited an employer for failing to comply with fall-protection standards after an employee was seriously injured in a fall. The employer alleged that the injured employee did not follow work safety rules and thus the employer was not responsible for an OSHA violation. Division staff represented DLI in a contested case proceeding and on appeal before the Minnesota Occupational Safety and Health Review Board, obtaining a ruling that the employer had not proved its affirmative defense of employee misconduct and a final decision upholding the citation against the employer.

DEPARTMENT OF VETERANS AFFAIRS

Provided legal representation to the Minnesota Department of Veterans Affairs (MDVA). For instance, the Division represented the MDVA in discharge proceedings that included the resident failing to pay monthly maintenance charges and the inability of the Veterans Home to meet the medical needs of a resident.

MINNESOTA CLIENT SECURITY BOARD

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

STATE AGENCIES DIVISION

The State Agencies division provides legal representation to the Departments of Administration, Commerce, Employment and Economic Development, Minnesota Management and Budget, Labor and Industry, and the Minnesota Housing Finance Agency, the Iron Range Resources and Rehabilitation Board, Minnesota State Board of Investment, Minnesota executive branch officials, and many other boards, agencies, councils, and commissions. The division also represents the Minnesota State Colleges and Universities System and other state agencies in contract, lease, and other transactional matters. The division's work during FY 2015 included:

BOARDS AND COUNCILS

- Division staff represented boards and complaint committees at board meetings and in contested-case proceedings when boards pursued action against licensees or unlicensed individuals who should have been licensed. Boards represented by the division include: Accountancy; Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design; Barbers; Cosmetologist Examiners; Peace Officers Standards and Training; School Administrations; and Teaching. The division also represents the Crime Victims Reparations Board in distributing funds to claimants affected by crimes, represents the Campaign Finance and Public Disclosure Board in enforcing lobbyist and campaign finance laws, and represents a variety of other state councils, commissions, ombudspersons, and other small boards.

BONDS AND INVESTMENTS

- Division staff represented the Commissioner of Minnesota Department of Management and Budget (MMB) in district court actions involving claims against the Torrens Assurance Fund and general fund, including tax forfeiture of real estate. Staff provided legal representation to MMB with respect to bond issuance and refunding by MMB of more than \$975 million in appropriation and general obligation bonds. Staff provided legal representation to the Minnesota State Board of Investment (MSBI) on various investments and investment-management agreements. Examples of the division's work in the last fiscal year include:

- Reviewing and negotiating 17 investments made by the MSBI with resource, real estate, private equity, and mezzanine asset managers totaling over \$1.8 billion.
- Preparing and advising the MSBI with respect to five transition management agreements.
- Advising the MSBI and Office of Higher Education with respect to the restructuring of the States 529 College Savings Plan, which increased investment options and lowered fees.

COMMERCE

- Division staff represented the Department of Commerce in numerous contested cases involving license applications and disciplinary actions against licensees and unlicensed individuals or businesses engaging in activities requiring licensure. Cases involved mortgage originators, real estate appraisers, real estate salespersons, collections agencies, securities salespersons, insurance salespersons, continuing-education providers, and notaries public. Staff also represented the Real Estate Education, Research and Recovery Fund, which included defending one of the Commissioner's decision at the Minnesota Court of Appeals. Specific examples of the division's work in the last fiscal year include:
 - Representing the Department in an enforcement action against Mortgage Investors Corporation, a mortgage originator operating across the nation that targeted veterans and substantially misrepresented loan terms on loans issued to nearly 1,000 Minnesota veterans. Division staff facilitated a settlement that imposed a \$300,000 civil penalty and barred the company from renewing its mortgage originator license in Minnesota or holding any other license granted by the Commissioner.
 - Representing the Department in an enforcement action against debt collection agency Receivables Management Solutions, Inc. and its owner, who owed clients, business vendors, and the IRS more than \$500,000, commingled trust funds with the company's operating account, and routinely issued checks returned for nonsufficient funds. The Commissioner ultimately revoked their debt-collection licenses and imposed a \$200,000 civil penalty.
 - Representing the Department in an enforcement action against a mother-daughter team of securities agents who diverted and converted more than \$930,000 from their clients' retirement accounts over the past decade. The matter was uncovered by the Attorney General's Office in connection with a lawsuit it filed against an insurance company and referred by the Attorney General's Office to the Commerce Department. The Commissioner revoked their licenses, barred them from the industry, and imposed a \$1.5 million civil penalty. The Department's case played a role in leading to one of the agents pleading guilty in federal court to theft, mail fraud, and tax fraud.
 - Representing the Department in an enforcement action against an online provider of continuing education courses for real estate licenses that falsified hundreds of course-completion certifications, substantially inflated education hours, and repeatedly used an unqualified instructor. The company ultimately had its

approval as a continuing-education provider revoked, was barred from the industry, and ordered to pay a civil penalty.

- Defending the Department's Real Estate Education, Research and Recovery Fund against a claim by a title insurance company seeking more than \$2.5 million for damages that allegedly arose from a straw-buyer mortgage-fraud scheme. The claims were ultimately dismissed with prejudice.
- Division staff also provide representation related to the Department's telecommunications, energy, and facilities-permitting responsibilities and its Weights and Measures division. Staff represented the Department before the Minnesota Public Utilities Commission and the Office of Administrative Hearings in numerous matters. Work by division staff related to a nuclear plan prudency investigation; requests to build, site, or route large generators, solar facilities, crude-oil pipelines, crude-oil pumping stations, and high-voltage transmission lines; energy generation emissions valuation proceedings; and electric-service territories. Staff further handled appeals of agency decisions and telecommunications complaints, mergers, investigations, and enforcement litigation. Some examples of the division's work included:
 - Representing the Department in a proceeding involving Charter Communications that resulted in a landmark decision that interconnected VoIP services provided by telecommunications companies are telephone services subject to the Department's jurisdiction.
 - Representing the Department in proceedings in which Xcel Energy sought significant rate increases and sought to recover millions of dollars from taxpayers for expenses it incurred in upgrading its Monticello nuclear plan. Consistent with the Department's position, the Public Utilities Commission did not allow all costs Xcel sought.
 - Representing the Department in complex proceedings related to North Dakota Pipeline Company's request to build a 612-mile oil pipeline through the state and successfully negotiating a financial assurance with its parent company, Enbridge Energy.
- Division staff began defending the Department in lawsuits challenging the state's unclaimed-property law and its biodiesel-fuel requirements. Staff also represented the Department in a still-pending case to recover up to \$25 million in funds paid from the Petroleum Tank Release Compensation Board to companies that failed to disclose alternative insurance coverage and negotiated settlements with insurers.

CONTRACTS AND INTELLECTUAL PROPERTY

- For numerous state agencies, division staff provided legal advice on issues related to state governmental operations; assisted in drafting and revising leases, licenses and contracts; and advised on intellectual property matters, including registering trademarks on behalf of a number of state agencies.

HOUSING FINANCE

- Division staff provided legal representation to the Minnesota Housing Finance Agency (MHFA) in transactions involving numerous loans totaling more than \$49 million and more than \$8.9 million in low-income housing tax credits to preserve, maintain, and create low and moderate-income multi-family housing. In addition to providing legal advice on federal, state, and local laws concerning loan program requirements, division staff assisted the MHFA in responding to a fair-housing discrimination complaint and defended the MHFA in litigation related to real estate and contract matters.

LABOR AND CODE ENFORCEMENT

- Division staff represented the Department of Labor and Industry's Construction Codes and Licensing Division and its Contractor Recovery Fund, handling numerous disciplinary actions against residential building contractors, remodelers, roofers, electricians, and plumbers. Examples of division staff's work included:
 - Obtaining an injunction against an unlicensed residential building contractor who continued to hold himself out to the public as a licensed contractor, remodeler, and roofer in violation of a prior cease-and-desist orders issued by the Department.
 - Representing the Department in an enforcement action and on appeal against a residential building contractor who failed to use proceeds from the property sales to pay its subcontractors or to otherwise satisfy judgments obtained by its subcontractors. The Court of Appeals affirmed the revocation of the contractor's license and the civil penalty imposed by the Commissioner.
 - Represented the Department in an enforcement action against a roofing company and its owner for engaging in unlicensed activities and violating a cease and desist order. The Commissioner lifted a stay on civil penalties that had previously been imposed against the company and its owner.
 - Represented the Department in a regulatory action against Stability Home Health Care, LLC, and several individuals who fleeced a vulnerable adult by performing unlicensed residential building contractor work in exchange for more than \$227,000. The respondents eventually entered into a consent order that imposed a civil penalty.

MINNESOTA STATE COLLEGES AND UNIVERSITIES

- Division staff provided legal representation to Minnesota State Colleges and Universities (MnSCU) regarding a variety of real estate construction, contract, intellectual property, condemnation, and licensing matters. Examples of division staff's work included:
 - Assisting in drafting a lease with the City of Duluth for an emergency training center for police officers.
 - Assisting in drafting a lease of bond-financed property with the City of St. Paul for a branch library.

- Advising a university on its use of an energy-savings program and a related dispute with a contractor hired to audit energy use.
- Assisting in drafting several licenses with telecommunication companies.
- Advising various campuses on software license agreements.
- Reviewing clinical-affiliation agreements.

OPINIONS

- Division staff responded to local governments who requested opinions under Minn. Stat. § 8.07.

REAL ESTATE

- Division staff provided legal advice and representation to the Department of Administration, the Land Exchange Board, the Board of Water and Soil Resources, the Department of Natural Resources, the Department of Revenue, and the Department of Transportation on various real estate matters, including leasing matters, restrictive covenants, easements, quiet-title actions, land acquisitions, title opinions and commitments, deed and easement reviews.

STATE PENSION BOARDS

- Division staff provided the State Pension Boards (MSRS, PERA, and TRA) legal advice and representation on a variety of issues that arise from the Boards' administration of the state pension funds.

OTHER LITIGATION AND REPRESENTATION

- Division staff represented the Departments of Public Safety and Natural Resources, and those agencies' current and former commissioners, on appeal to defend the dismissal of lawsuits seeking millions of dollars for allegedly violating federal law concerning disclosure of driver's license information.
- Division staff also successfully defended the State in district court and on appeal in a lawsuit seeking substantial damages related to the scope of the State's tobacco settlements.
- During the last fiscal year, the division provided regular representation to the Department of Natural Resources, the Minnesota Department of Agriculture, the Board of Animal Health, and the Board of Water and Soil Resources. Issues included challenges to Minnesota lakes' water levels and state food-licensing laws, fishing regulations, food-safety violations, food-borne illness outbreaks, dairy sales, and animal-research permits.

TRANSPORTATION DIVISION

The Transportation division provides legal services 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 and other state agencies involved in construction projects and represents the State when contractors, subcontractors, or third parties sue the State on construction-related matters. The division also protects taxpayers by filing claims on behalf of the State against entities that perform defective work, fail to pay employees legally mandated wages, or otherwise fail to comply with contractual requirements.

The division advises client agencies on the legal ramifications of proposed activities and development projects, assists State agencies in real estate transactions and evaluates and attempts to resolve claims before litigation arises.

In FY 2015, the division:

- Provided legal representation to MnDOT in litigation related to eminent domain actions and appeals arising in connection with hundreds of properties that are acquired for roadways and other transportation projects such as light rail and bridge replacement. The division also defends MnDOT against claims that its projects have resulted in inverse takings and provides legal assistance in voluntary sales of real estate for transportation projects.
- Represented the Commissioner in contested case hearings in regulatory matters addressing issues such as payment of relocation benefits, proposed debarment of a trucking company, highway turnbacks, and limousine license compliance.
- Advised MnDOT regarding its programs and offices such as Equal Employment Opportunity, Aeronautics, Railroads and Waterways, Project Development, State Aid, Research and Investment Management, Office of Motor Carrier Services, Office of Environmental Stewardship, and Office of Civil Rights.
- Appeared before the Minnesota Supreme Court and Court of Appeals in appeals regarding issues including a proposed land transfer to a political subdivision, application of the prevailing wage law, the Marketable Title Act, award of attorney fees, and road turnback agreements with counties.
- Provided legal representation to MnDOT in its statutory prevailing wage enforcement responsibilities in attempting to recover unpaid wages for contractors' employees on MnDOT projects.
- Provided representation to the Minnesota National Guard regarding legal matters including contract review and real estate transactions.
- Provided legal representation to and advised MnDOT, Minnesota State Colleges and Universities, the Minnesota Department of Administration, and the Minnesota Department of Natural Resources in litigation, settlement negotiations, arbitration, and mediation of construction contractor claims.
- Provided legal representation to MnDOT in proceedings subsequent to initial registration of land.

Specific examples of the division's work in FY 2015 include:

- Defending MnDOT in two district court actions seeking declaratory and injunctive relief brought by a general contractor and two trucking firms seeking to prevent MnDOT's enforcement of the Minnesota Prevailing Wage Act on the work performed by the trucking firms on state projects. The district courts granted MnDOT's motions for summary judgment, and the Court of Appeals affirmed the district courts' summary judgment determinations. The Minnesota Supreme Court has granted further review. Division staff has filed written argument on behalf of MnDOT and will present oral argument when scheduled.
- Defending MnDOT, the Minnesota Department of Natural Resources, and the Minnesota Department of Administration against a claim by a general contractor seeking approximately \$2 million for damages that allegedly arose from a breach of contract when DNR terminated a contract after the contractor failed to complete work on the project and some of the work on the project was defective.
- Representing MnDOT against a landowner's motion to expand a taking to include existing MnDOT right-of-way boundaries along Highway 61 in Lake County. The district court found in MnDOT's favor and dismissed the motion. On appeal, the Court of Appeals affirmed the district court's decision. Landowners have sought further review by the Minnesota Supreme Court. Division staff has filed a written response to the petition on MnDOT's behalf.
- Defending MnDOT in a district court action seeking declaratory and injunctive relief brought by two counties seeking to prevent MnDOT from releasing a former trunk highway back to the counties without an agreement in place that would provide for future funding for county restoration and maintenance of the road. Division staff facilitated a settlement whereby MnDOT would construct certain road improvements contingent upon legislative and gubernatorial approval, which MnDOT obtained.
- Representing MnDOT in a district court action seeking declaratory and injunction relief brought by a landowner seeking to enjoin MnDOT from conveying land it no longer needed for trunk highway purposes to a city's housing and redevelopment authority for subsequent conveyance to a developer whose stated purpose was to develop senior and multi-family housing. The district court dismissed the landowner's suit with prejudice when it failed to post the court-ordered bond, the Court of Appeals reversed and remanded to the district court for further proceedings, and the Supreme Court ultimately upheld the district court's dismissal with prejudice because the landowner did not file the court-ordered bond. Division staff is representing MnDOT in a post-appeal motion to re-open.
- Representing MnDOT in an eminent domain proceeding commenced pursuant to MnDOT's reconstruction of the interchange at I-494 and TH 169. Landowners claimed damages in excess of \$11.5 million. MnDOT paid \$1.2 million before a hearing where commissioners ordered \$3.35 million in total damages. Landowners appealed and a jury trial is set. Division staff received a favorable ruling in its pre-trial motions, and will assist MnDOT in pre-trial mediation.

SOLICITOR GENERAL

The Solicitor General division provides litigation services to a variety of agencies in all branches of government. Solicitor General attorneys provide legal representation in cases with significant constitutional or other state interests, as well as in employment and tort claims. The section also provides legal representation to the Public Utilities Commission (PUC).

Specific examples of litigation in FY 2015 include:

- ***Kimberly Clark v. Minnesota Department of Revenue.*** In 2013, Multistate corporate taxpayer Kimberly Clark filed to amend their Minnesota franchise tax returns for tax years 2007 to 2009. Kimberly Clark alleged that it was entitled to rely on an equal-weighted apportionment formula enacted by Minnesota in 1983. *See* Minn. Stat. § 290.171 (1984). The apportionment formula was enacted as part of a larger law called the Multistate Tax Compact. In 1987, Minnesota repealed § 290.171 and replaced it with a different apportionment formula. Kimberly Clark argued that Minnesota's 1987 repeal was unconstitutional and/or ineffective, and sought to take advantage of the repealed apportionment formula. Similar litigation has arisen in other States, and numerous other corporate taxpayers in Minnesota have filed similar refund claims. The impacts of an adverse claim on Minnesota's budget are estimated at approximately \$700 million. Fortunately, the Minnesota Tax Court granted summary judgment dismissing the refund claim. Kimberly Clark has appealed to the Minnesota Supreme Court who will review the Tax Court decision.
- ***Guggenberger v. Minnesota Department of Human Services, et al.*** In 2015, four individuals with developmental disabilities filed suit against the Department of Human Services, alleging that Minnesota's implementation of certain disability waiver services was unlawful. Between 1995 and 2015, Minnesota counties reserved a percentage of funds appropriated for Developmental Disability Waivers and Community Alternatives for Disabled Individual Waivers. Plaintiffs seek to represent a class of individuals who were denied waiver services and allege that the amounts held in reserve were excessive and unlawful. The Complaint was filed in federal court, where it will be heard by Honorable Judge Donovan Frank.
- ***Community Action of Minnesota.*** During a 2014 audit, the Department of Human Services (DHS) discovered that Community Action of Minneapolis, Inc. (CAM) had misspent federal and state grant money. The Department of Commerce (DOC) similarly found problems with CAM's improper use of its grant funds. DHS and DOC both terminated their grant contracts with CAM. DHS also terminated CAM's recognition as a community action agency under state law. The division represented DHS and DOC in filing a motion to place CAM into receivership to preserve whatever assets remain while they attempted to recoup the misspent funds. The district court granted DHS and DOC's motion and subsequently awarded \$507,939 to DHS and \$245,620.72 to DOC. A federal grand jury recently indicted former CEO Bill Davis and his son for using CAM funds for personal use.

- ***Rebecca Johnson v. State of Minnesota, Council on Black Minnesotans, Department of Administration, Sue Wickham, and Edward McDonald.*** Rebecca Johnson, a former employee of the Council on Black Minnesotans (Council), filed suit alleging that she was subject to employment discrimination as a result of age, gender, and national origins. Plaintiff also brings tort claims, including alleged defamation. In discovery, a number of witnesses provided testimony in support of Plaintiff's allegations, which the Council's Executive Director disputes. As part of discovery, Plaintiffs also raised concerns that Council failed to comply with the Open Meeting laws and destroyed tapes and recordings of meetings.
- ***Natalie Chinander and Theresa Danielson v. Minnesota Department of Education.*** Former employees in Minnesota Department of Education's Human Resources department sued alleging that they were wrongfully terminated in violation of the Minnesota Whistleblower Act, claiming that they were terminated after making reports of unlawful conduct. In fact, the court found that Plaintiffs were terminated from MDE after a thorough MMB audit and investigation determined that Plaintiffs had used their positions in the Human Resources Department to promote each other and give each other raises. The Ramsey County District Court granted summary judgment and dismiss Plaintiffs claims.
- ***Jonathan Ziesmer v. Derrick Hagen, individually and in his professional capacity as a Minnesota State Patrol Officer.*** Plaintiff Jonathan Ziesmer filed a claim under 42 U.S.C. § 1983, alleging that a Minnesota State Patrol Trooper used excessive force in a roadside stop that occurred in the early morning hours of August 22, 2010. Plaintiff alleged that the Trooper had tackled him and struck him in the back of his head. The Trooper strongly disputed Plaintiff's account, but had not activated his dash camera. Because of the differing factual accounts, the case proceeded to a federal jury trial. After several days of testimony, the jury rejected the Plaintiff's account and returned a defense verdict, finding no liability on behalf of the Minnesota State Patrol Trooper.
- ***Armstrong v. Dept. Natural Resources.*** After a snowmobiler collided with the back of a logging truck in a state forest, the snowmobiler and his wife sued the State of Minnesota, through its Department of Natural Resources (DNR). Plaintiffs claimed that the DNR was negligent by allowing loggers and snowmobilers to share the trail and failing to monitor the trail signage. The DNR moved for summary judgment arguing that (1) the DNR is entitled to vicarious official immunity because its officials exercised their professional judgment in allowing loggers to use the snowmobile trail; (2) Plaintiffs' signage claim is barred by statutory immunity because the DNR's trail monitoring decisions are based on social, political, and economic considerations; and (3) the DNR is entitled to recreational immunity. The district court granted summary judgment based on vicarious official immunity. The case proceeded to trial against the logging company and the truck driver. A jury found Petitioner at fault for the accident. The Minnesota Court of Appeals affirmed.
- ***Regel v. Minnesota Department of Corrections.*** Plaintiff asserted both federal and state claims arising out of the death of an inmate at the Minnesota Correctional Facility at Lino Lakes. Over the course of several days, the decedent had reported difficulty breathing, chest pain, and was found unresponsive. On the third day, Plaintiff's vitals were severe and Plaintiff was sent by ambulance to the hospital, where he died that same day. Plaintiff claimed violations of the decedent's rights under the Eighth Amendment and the

Due Process Clause of the Fourteenth Amendment, as well as medical malpractice. Plaintiff's state law claims were for negligence and medical malpractice. Plaintiff initially demanded \$2 million for a full release of all claims. After mediation, the case settled for \$200,000.

- ***Claims Under The Imprisonment And Exoneration Remedies Act.*** In 2014, the Legislature created a process by which individuals who have been wrongfully convicted can seek compensation from the State. The statute creates a two-phase process in which the claimant must first establish eligibility for compensation, and then must establish damages related to the person's wrongful conviction. After the damages phase of the proceedings, the claim is then presented to the Legislature for consideration. Division attorneys have been responding to several claims that have now been filed under the Act.

More generally, employment litigation often includes claims 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 section also represents 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. Examples of specific cases include: highway crash cases in which the Minnesota Department of Transportation is faulted for inadequate design, construction, or maintenance of state roadways and highways; suits against the Department of Human Rights and Department of Corrections for deaths or injuries occurring in institutions they operate; and personal injury claims against multiple state agencies related to sidewalk maintenance and snow removal practices or other accidents.

The section also provides representation to the PUC in both state and federal courts. Examples of PUC decisions the section has defended in state court include: the need for environmental review of a proposed utility infrastructure project and approvals of utility acquisition plan for renewable energy sources. In federal court, the section has defended the authority of the State to regulate the use of new coal-fired energy in the state.

In defending such claims, the division has saved the State millions of dollars.

RESIDENTIAL UTILITIES AND ANTITRUST

The division advocates for consumers and represents the interests of residential and small business utility consumers in the complex and changing electric, natural gas, and telecommunications industries, particularly with regard to utility rates, reliability of service, and quality issues pursuant to statute.

The division also investigates potential violations of state and federal antitrust laws, and enforces these laws when it uncovers evidence of anticompetitive conduct. The division participates in numerous coordinated investigations of potential anticompetitive conduct by multiple state and federal enforcers of antitrust laws, including other state attorneys general, the U.S. Department of Justice, and the Federal Trade Commission.

Specific examples of the division's work in FY 2015 include:

- ***Xcel Energy (Xcel) 2013 Multi-Year Rate Case.*** Xcel filed a multi-year rate plan requesting an increase of \$192 million in 2014 and an additional \$99 million in 2015, for a total of \$291 million. The division intervened in the rate case and contested multiple aspects of Xcel's request, including corporate aviation expenses, nuclear refueling costs, depreciation reserve adjustments, construction financing costs, disputed construction costs, distribution of insurance proceeds, interim rate refunds, decoupling, allocating more costs to the residential class than other classes, and increasing the customer charge. The PUC agreed with the division on several issues, although the final approved rate increase has not yet been determined. In particular, the PUC denied Xcel's improper use of depreciation reserve as a rate moderation device, denied recovery of corporate aviation expenses, refunded disputed contractor costs to ratepayers, modified the decoupling program as recommended by the division, reduced the allocation of costs to the residential and small business classes, and denied the request to increase customer charges.
- ***Minnesota Energy Resources Corporation (MERC) Gas Rate Case.*** MERC filed a rate case for a \$14.2 million increase in rates in 2014. The division intervened in the rate case and contested multiple aspects of the request, including the return on equity provided to investors, the study used to determine which customer classes contribute to the cost of providing utility service, application of a higher rate increase to residents and small businesses than to large business customers, the methodology used to project MERC's future sales, the amount of entertainment, travel, and lobbying expenses that the company can collect from ratepayers, and MERC's proposal to increase the customer charge for residential customers from \$8.50 to \$11 per month. Following a contested case proceeding, the PUC granted a rate increase of \$7.6 million. Based in part on the Office's advocacy, the PUC ordered additional studies of MERC's methodology of assigning costs among customer classes, and approved a smaller-than-proposed increase to the residential customer charge at \$9.50 per month.
- ***Xcel Energy/Monticello Nuclear Plant Investigation.*** In its 2013 electric rate case, Xcel Energy requested cost recovery for a life cycle management and extended power uprate at the Monticello Nuclear Generating Plant. While Xcel initially estimated that these projects would cost approximately \$320 million, the projects ultimately cost

approximately \$748 million. Instead of granting cost recovery, the PUC ordered an investigation into the cost overruns. The division intervened in the proceeding and provided testimony demonstrating that Xcel's management of the project was imprudent, and that the Company's imprudence led to cost overruns for the project that should not be recovered from ratepayers. The PUC agreed that Xcel had not met its burden to prove that it acted prudently, and denied the opportunity to earn its rate of return on the cost overruns. While the financial impact of the PUC's decision is not yet fully determined, it will result in a rate reduction of between \$18 million and \$24 million, stepping down every year for approximately 20 years.

- ***Xcel Energy Gas Utility Infrastructure Cost Rider.*** Xcel Energy filed a petition to recover gas utility infrastructure costs through a rider under Minn. Stat. § 2165B.1635 on August 1, 2014. The company sought to recover approximately \$15 million through the rider in 2015. The division filed comments in opposition to the rider, instead recommending that the company file a new rate case to recover the costs. In the alternative, the division sought to adjust Xcel's cost of equity to reflect more recent market conditions, allocate costs based on apportionment from its last rate case, and limit approval of the rider to one year unless the company could demonstrate that its costs could not be normalized and thus recovered in base rates. In approving the petition, the Commission required, in response to the division's arguments, that the company amortize the costs over a five-year period, that it reduce its rate of return to match the cost of debt from its pending electric rate case and the cost of equity from its last gas rate case, and that it submit detailed schedules related to the rider in its next rate case. The division filed a motion for reconsideration that was denied by the Commission.
- ***Xcel Energy Transmission Cost Recovery Rider.*** Xcel Energy filed a petition to set its transmission cost recovery rider at \$65.8 million, which includes five new transmission projects and new costs related to the Midcontinent Independent System Operator in its transmission cost recovery. The change would increase rates for a typical residential customer from \$1.15 per month to \$2.02 per month. In addition, Xcel requested approval of two additional transmission projects that were out-of-state projects which were eligible under new 2013 legislation. Although Xcel noted that it had committed to not seek additional rider recovery of new projects that were to begin during Xcel's multi-year rate plan years of 2014 and 2015, it requested consideration of adding them to the 2015 TCR. The division participated in the case and opposed the inclusion of these two additional transmission projects due to Xcel's earlier commitment. The PUC agreed with the division's recommendation to limit the out-of-state projects and to update the rate of return and jurisdictional allocations.
- ***Minnesota Power (MP) Transmission Cost Recovery Rider.*** MP filed a petition to increase its rider rate by \$6.5 million in 2015, for a total revenue requirement of \$30.7 million in 2015. MP calculated the revenue requirement using its last rate case cost of capital from 2009. The division recommended that the utility request recovery of the costs through a rate case rather than a rider due to the unusual size of the increase, and recommended that the PUC require MP to update its rate of return given market changes since it was last set. The PUC will consider the comments of parties and make a determination later in 2015.
- ***DRAM Multistate Antitrust Litigation.*** In 2013, a California federal court approved a settlement between Minnesota and other states and various defendants who had allegedly

conspired to fix the price of a common memory product used in computers and other devices, known as DRAM. The settlement calls for, among other sanctions, payment of damages, including approximately \$300,000 directly to the State of Minnesota. These monies will be disbursed to consumers after the appeals process is complete. In addition, Minnesota consumers were eligible to submit direct claims for recovery of losses. The appeals remain pending, and the division continues to participate in the litigation.

- ***Telecom Service Quality.*** In March, 2014, CenturyLink filed petitions to grant it a waiver from the PUC's rules governing telephone service quality, and to initiate a rulemaking aimed at repealing the service quality rules. The PUC denied CenturyLink's petition for a waiver, but granted its petition to open a rulemaking proceeding. The division joined the case and recommended that the PUC deny CenturyLink's request to repeal the service quality rules because CenturyLink and other parties favoring repeal had failed to produce any evidence that there is effective competition for wireline telephone service in Minnesota. Such a rule change would harm consumers. The PUC has received several rounds of comments but has not made a final decision in the matter.
- ***FTC v. Sysco Co.*** On February 19, 2015, Minnesota and a group of states filed suit with the Federal Trade Commission (FTC) to block the proposed merger between Sysco Foods, Co. and U.S. Foods. On June 23, 2015, the United States District Court for the District of Columbia granted the FTC and the states' motion for a preliminary injunction blocking the merger, concluding that there was a reasonable probability that the merger would harm competition in the foodservice distribution industry. Following the Court's decision, Sysco and U.S. Foods announced that they would abandon the transaction.
- ***FERC ROE Complaint.*** The Federal Energy Regulatory Commission (FERC) sets the revenue requirement and rate of return for interstate transmission service. The current rate of return of 12.38% was set in 2003, and is substantially higher than current market conditions would justify. The increased rate of return increases costs for transmission customers (and ultimately affects the retail price paid by consumers for electricity). A group of transmission customers filed a complaint at FERC to update the cost of equity, and the division joined a group of consumer advocates to support the petition to reduce the rate of return. Initial testimony has been filed and the case will continue with additional testimony and discovery in 2015, with a FERC decision expected in late 2015. If a reduction in the rate of return is approved it will reduce the cost of service for Minnesota utilities and their retail customers.
- ***State v. Renewable Energy SD, LLC.*** The division continued its litigation of a lawsuit filed in Hennepin County District Court in January, 2013, against Renewable Energy SD, LLC (RESL) and its owner, president, and founder, Shawn Dooling. RESL took millions of dollars from Minnesota farmers for wind turbines and renewable energy projects that were not delivered as promised. The division also represented the interest of Minnesota consumers in multiple bankruptcy dockets related to RESL and Mr. Dooling.

STATE SERVICES

HEALTH OCCUPATIONS

The Health Occupations division provides legal representation to the State's health licensing boards and the Health Professional Services Program as well as conducts investigations at the request of the State's health licensing boards. The division advises the boards on legal issues such as procedural due process, subpoena power and board authority. The division represents the boards at board disciplinary conferences and in contested cases at the Office of Administrative Hearings as well as in district and appellate courts.

During FY 2015, division investigators completed over 230 investigations involving nearly 300 complainants. Some investigations for FY 2015 included:

- A chiropractor (and six-time convicted felon) whose license was revoked for financially swindling patients and other victims by inducing them to participate in a purported high-return investment scheme, but keeping the victims' invested money for his own use;
- A physician whose license was revoked and was convicted of first and third degree assault for attempting to choke a minor child with special needs and tying a string around the child's genitals, causing the child pain;
- A licensed alcohol and drug counselor whose license was suspended for relapsing with alcohol and using marijuana, cocaine and methamphetamine;
- A practical nurse whose license was suspended and was charged with two counts of felony controlled substances crimes and one count of felony theft for stealing controlled substances from a patient and fraudulently altering two controlled substance prescriptions;
- A dentist who surrendered his license for improperly billing third-party payers for services that he did not actually render on approximately twenty-five patients;
- A physician with a lengthy disciplinary history whose license was revoked for violating the term of a disciplinary order requiring that his medical practice be supervised by a physician pre-approved by the Board; and
- A pharmacy technician who surrendered her license for diverting controlled substances from the pharmacy where she worked.

During FY 2015, the division provided legal representation to boards in contested case proceedings before the Office of Administrative Hearings involving professional misconduct, sexual misconduct, inappropriate dual relationships, and mental health/chemical dependency. For example, the division represented the Board of Chiropractic Examiners in a contested case against a chiropractor who the Board temporarily suspended for engaging in a sexual relationship with an individual who was both the chiropractor's employee and patient. The chiropractor also required all of his employees (who were all female) to be under his chiropractic care, which included disrobing and wearing a gown when receiving such care. The case resulted in a disciplinary order against the chiropractor's license. The division also represented the Board of

Nursing in a contested case against a practical nurse who the Board temporarily suspended for engaging in a sexual relationship with a patient, who was classified by the Minnesota Department of Human Services as a vulnerable adult. This case resulted in the revocation of the nurse's license.

In addition to contested cases before the Office of Administrative Hearings, the division provided legal representation to the boards' disciplinary committees in matters involving licensees' noncompliance with disciplinary orders warranting further discipline, orders for mental and physical examinations, temporary suspensions and the board's review of ALJ reports and recommendations resulting from contested case proceedings. For example, the division regularly provided legal representation to the boards where licensees failed to remain chemical free as required by their disciplinary orders or where the boards sought to temporarily suspend the license. In addition, the division represented the Minnesota Board of Medical Practice before the Minnesota Court of Appeals when a licensee challenged the Board's order revoking his medical license for violating the terms of a prior disciplinary order.

The division successfully defended the Board of Podiatric Medicine in district court in response to a temporary injunction motion a podiatrist brought seeking to enjoin the Board from enforcing an order suspending his license for 18 months based on his noncompliance with a prior disciplinary order. The division also represented the Board of Physical Therapy in district court seeking to hold an unlicensed individual in contempt of a 2014 court order requiring her to cease and desist from holding herself out to the public as a physical therapist.

Finally, the division provides legal representation to the Health Professionals Services Program, which is the health boards' diversion program for health care providers diagnosed with mental illness or chemical dependency. The program establishes practice restrictions, monitoring requirements, and sets boundaries for impaired physicians, nurses, pharmacists, dentists, and other participating health care practitioners.

NATURAL RESOURCES

Attorneys in the Natural Resources division (NRD) provide legal advice and representation to 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 and the Board of Animal Health.

Many cases arise out of the agency and board's enforcement programs. NRD attorneys provide legal advice and represent the agencies and boards in hearings at the Office of Administrative Hearings and at board meetings. NRD attorneys provide legal advice and litigation services to the agencies and boards on cases arising out of a variety of non-enforcement issues. The division gets court ordered access needed for the inspectors to build cases and enters administrative orders as judgments and enforces those orders. The division assists the agencies and boards in negotiating stipulation agreements with regulated parties to resolve more broad-based or serious violations. In situations where settlement is not reached, enforcement matters may be litigated on behalf of the agencies and boards by NRD attorneys in the district and appellate courts. Although less common, NRD attorneys also represent MPCA in federal cases with the United States Environmental Protection Agency (USEPA) and regulated parties. The

NRD attorneys also defend the agencies and boards when parties bring actions challenging their programs or decisions.

Examples of the division's work for the boards and agencies during FY 2015 included:

- Motion in district court to obtain a judgment for costs incurred by the MPCA against responsible persons who had abandoned hazardous waste at a site in St. Louis County.
- Construction stormwater permit violation case involving a construction contractor and a county.
- Court of Appeals challenge seeking to deem MPCA's effort to enforce the "restriction on disposal" statute an "unpromulgated rule."
- Court of Appeals and Supreme Court challenge to an administrative order issued to require a feedlot operator to obtain a federal or state permit to control discharges.
- Representing MPCA in a challenge to its authority to issue state permits under its feedlot rules.
- Representing MPCA in a case brought by the U.S. EPA to resolve longstanding water quality issues associated with a sugar beet processing facility.
- Declaratory judgment action challenging the validity of MPCA's water quality standards rules pertaining to eutrophication (problem algae growth) in rivers and streams caused by excess nutrients, such as phosphorus at the Court of Appeals.
- Filing legal memoranda, in a federal lawsuit regarding the Fargo Moorhead flood diversion project.
- Represent DNR at the Office of Administrative Hearings and the Court of Appeals regarding DNR's denial of a permit for black bear research.
- Enforcement action against a company that removed ash trees that had been quarantined by the MDA.
- Appeal of a food embargo issued by the MDA after it inspected a warehouse.
- Represented the MDA in an action challenging the constitutionality of a statute requiring that certain individuals who prepare and sell food must be licensed if sales exceed a statutory dollar limit.
- Various waters use and appropriation permits and environmental review matters.
- Real estate acquisitions totaling over \$21 million and involving approximately 8,093 acres of land.
- Legal advice to MPCA and DNR on various real estate title matters, including ownership of submerged lands, tax forfeitures, easements, probate proceedings, trusts, life estates, adverse possession, bankruptcy, boundary agreements, mineral forfeitures, indemnification, deed restrictions, land registration, quiet title, road vacation, condemnation, declarations and protective covenants.
- Representing the DNR on the potential lease of the Upper Post at Fort Snelling State Park and a mechanic's lien on State owned land.

- Represented the DNR forestry division on various matters, including fire suppression cost collection, bankruptcy, timber trespass, and statutory interpretation.
- Assisting DNR in the settlement of a Minnesota Environmental Rights Act case regarding the elevation of White Bear Lake.
- Court of Appeals case challenging DNR's adoption of emergency fishing regulations for Mille Lacs.

The attorneys in the division provided legal advice to the Department of Agriculture and represented the Department of Agriculture in several court actions. The division also provided legal advice to the Board of Water and Soil Resources on appeals to the board and other issues.

TAX LITIGATION AND EDUCATION

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

TAX LITIGATION & BANKRUPTCY

In FY 2015, the division represented the Department in over 300 active revenue and bankruptcy litigation cases and helped the Department secure over \$10 million in revenue in corporate, sales/use tax and individual income tax assessments. Division attorneys appear in the Minnesota Supreme Court, the Minnesota Court of Appeals, Minnesota Tax Court, state district court, federal district court and the federal appellate court (8th Cir.) and Bankruptcy Court. The majority of new cases involve the State's income and sales taxes including personal liability assessments against corporate officers for corporations' unpaid withholding taxes and sales taxes. The most financially significant individual cases are corporate tax refund claims and challenges to Revenue's assessments of corporate tax ranging in amounts up to \$700 million dollars.

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

The division also reviewed and responded to numerous property liens, lawsuits and filings involving Revenue including foreclosure actions, quiet title actions, land registration, notices of property sales, etc. in state and federal court and defends or seeks to preserve the priority of state tax liens over the liens and judgments of other claimants.

SIGNIFICANT RESOLVED AND PENDING TAX LITIGATION & BANKRUPTCY CASES:

- Corporate Tax. Multi-National Jewelry Retailer. Provided legal representation in a settlement of approximately \$370,000 in the Minnesota Tax Court in a suit by a large multi-national jewelry retailer which challenged Revenue's assessment of corporate tax.
- Corporate Tax. Wireless Provider. Obtained a favorable settlement on behalf of Revenue in the Minnesota Tax Court in a suit by a wireless provider challenging Revenue's assessment of corporate tax of approximately \$1.3 million.
- Corporate Tax. Car Dealership. Obtained a favorable dismissal on behalf of Revenue in the Minnesota Tax Court in a suit by a car dealership challenging Revenue's assessment of approximately \$400,000 in corporate tax.
- Corporate Tax. Provided legal representation and obtained numerous favorable settlements on behalf of Revenue in the Minnesota Tax Court challenging Revenue's assessment of corporate tax.
- Sales/Use Tax. Obtained a favorable decision in the Minnesota Tax Court and provided legal representation in the Minnesota Supreme Court with regard to claims by multiple electric cooperatives appealing Revenue's assessment of \$15 million of erroneously refunded sales/use tax.
- Sales/Use Tax. Provided legal representation to Revenue in the Minnesota Tax Court and the Minnesota Supreme Court in connection with claims by numerous profitable and large bars and restaurants challenging sales tax assessments of over \$6 million.
- Sales/Use Tax. Software Retailer. Obtained a favorable decision in the Minnesota Supreme Court and provided legal representation to Revenue with regard to claims by a software retailer appealing Revenue's assessment of about \$300,000 of sales/use tax on the sale of software.
- Sales/Use Tax. Obtained a favorable decision in the Minnesota Tax Court affirming Revenue's assessment of over \$700,000 in sales/use tax against a major health care provider for the sale of parking services.
- Sales/Use Tax. Luxury Hotel & Restaurant. Obtained a favorable settlement on behalf of Revenue in the Minnesota Tax Court in a suit by a luxury hotel & restaurant appealing Revenue's assessment of over \$800,000 in sales/use tax.
- Sales/Use Tax. Weight-Loss Supplement Retailer. Obtained a favorable decision in the Minnesota Tax Court affirming Revenue's assessment of a weight-loss supplement retailer of sales/use tax of about \$300,000.
- Sales/Use Tax. Obtained numerous favorable decisions in the Minnesota Tax Court affirming Revenue's assessment of sales/use tax on various retailers.
- Officer Liability Assessment for Corporate Officers. Provided legal representation and obtained numerous favorable decisions at the Minnesota Tax Court affirming Revenue's personal liability assessment of corporate officers for the payment of business's unpaid sales tax of multi-million dollars.
- Individual Income Tax on High Income Resident Claiming Gambling as a Business. Obtained a favorable settlement on behalf of Revenue in the Minnesota Tax Court on an individual income tax assessment of about \$2.5 million in a suit by a high-income

individual who claimed he was a professional gambler and thus should be able to deduct his gambling losses.

- Individual Income Tax on High Income Residents Claiming Non-Residency. Obtained a favorable decision in the Minnesota Tax Court affirming Revenue's assessment of over \$2.2 Million in a suit by high income individuals challenging Revenue's assessment of income tax and asserting that the individuals were not residents of Minnesota for the assessment period, but rather residents of a state with no state income tax.
- Individual Income Tax on High Income Residents Claiming Non-Residency. Provided legal representation in Minnesota Tax Court and the Minnesota Supreme Court in suits by several high-income individuals who claim they are residents in a non-income tax state.
- Commissioner Valuations of Natural Gas Pipeline and Utility Companies. Provided legal representation in the Minnesota Tax Court and the Minnesota Supreme Court in suits by multiple natural gas pipeline and utility companies challenging the Commissioner's valuation of the companies in the amounts of several millions of dollars.
- Tax Protestors. Obtained several favorable decisions at the Minnesota Supreme Court, federal district court, state district court and the Minnesota Tax Court rejecting claims of tax protestors that their incomes were not subject to Minnesota income tax or concluding that protestors could not shield income from state taxation by shifting it into sham trusts or other sham transactions.

MINNESOTA STATE COLLEGES AND UNIVERSITIES (MnSCU)

The division provides legal representation to MnSCU in a variety of lawsuits initiated primarily by students and some by former staff against MnSCU. In FY 2015, the division continued to litigate several employment law cases on behalf of MnSCU. The division provided legal advice on a wide range of issues, including student disciplinary proceedings, and various additional constitutional issues that arise in the context of educating, counseling and the housing of students and employment law matters. Examples of the division's work for MnSCU during the last year include:

- Student Claim of Negligence and Due Process Violation. Provided legal representation to MnSCU in state district court and the Minnesota Court of Appeals against claims by a student that the school violated her due process rights when she was arrested for immigration law violations.
- Student Appeal of School Suspension. Provided legal representation to MnSCU at the Office of Administrative Hearings against claims by a student that the campus should not have suspended him for assaulting another student and committing plagiarism.
- Student Claim of Disability Discrimination. Provided legal representation to MnSCU in federal district court against claims by a student that the campus did not adequately accommodate her disability.
- Student Claim of Violation of First Amendment Rights. Provided legal representation to MnSCU in federal district court and at the 8th Circuit against a claim by a student that the

school violated his First Amendment Rights when he used social media to threaten and harass another student regarding her disability accommodation.

- U.S. Department of Education, Office for Civil Rights (OCR). Provided legal advice and defended against complaints filed with the OCR, including the dismissal of student claims of alleged discrimination.
- Minnesota Department of Human Rights (MDHR). Obtained several dismissals or findings of no discrimination against various MnSCU campuses.

MINNESOTA DEPARTMENT OF EDUCATION (MDE)

The division provides legal representation to MDE, which administers and oversees the State's K-12 education programs, including charter school issues, state and federal special education programs, data practices, the federal No Child Left Behind Act, graduation standards and testing, the child and adult food care program, and state financial audit issues. The division's legal work for MDE included:

- Commissioner's Authority to Regulate Charter Schools. Obtained favorable decisions at the Minnesota Court of Appeals regarding the Commissioner's authority to enforce the state charter school statute and hold authorizers accountable for overseeing various aspects of charter school administration.
- Special Education. Successfully defended MDE in lawsuits in federal district court and in the Eighth Circuit Court of Appeals which challenged MDE's supervision of local school districts in complying with federal and state special education laws and MDE's complaint resolution decisions regarding special education services.
- Maltreatment of Minors in Schools. Provided legal representation to MDE in several maltreatment hearings contesting MDE's findings of maltreatment by a school worker (such as a teacher, assistant teacher or bus driver). Successfully defended several appeals of MDE's final determination of maltreatment to state district court.

OFFICE OF HIGHER EDUCATION (OHE)

The division provides OHE with legal representation on a variety of issues that arise from OHE's administration of federal and state higher education programs, including (1) student loan and financial aid programs; (2) registration of private and out-of-state public higher education institutions that provide programs in Minnesota; and (3) licensure of private business, trade and correspondence schools.

PUBLIC SERVICES

TRIALS AND APPEALS

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

The division assists counties in the prosecution of serious crimes in trial courts throughout Minnesota when requested by a county attorney. Representative work during FY 2015 included:

- Convicted Robert Warwick of first-degree murder for the murder of his 79-year-old grandmother, Lila Warwick, in Kandiyohi County. The court sentenced him to life in prison.
- Convicted Jessica Kilde of second-degree murder for the death of her boyfriend, Richard Baity, in Becker County.
- Convicted Chad Laraby of second-degree murder for the death of his girlfriend, Linda Boehme, in Yellow Medicine County.
- Conducted grand jury proceedings and obtained first-degree murder indictments.
- Represented the State in post-conviction challenges to murder convictions.
- Provided continuing legal advice and assistance to the Bureau of Criminal Apprehension, the Child Mortality Review Board, the Violent Crime Coordinating Council, the Advisory Committee on the Rules of Criminal Procedure, CrimNet, the Restitution Working Group, the Stop it Now Advisory Committee, and the Minnesota Board of Law Examiners.
- Provided continuing review of Extradition paperwork for the Office of the Governor.

Division attorneys also provide assistance to county attorneys in civil commitment hearings involving dangerous sexual predators, upon the request of the county attorney. When a county attorney decides to proceed with a civil commitment petition, division attorneys assist the county attorney in preparation of the commitment petition, handling of pre-trial matters, and the handling of the commitment hearing and any appeal.

The division's attorneys handled numerous cases in which civilly committed sexual predators filed motions to vacate their commitments. As the population of committed sexual predators increases, the number of petitions for habeas corpus and such motions from the Department of Human Services' regional treatment centers continues to grow.

The division's attorneys also handle administrative hearings required by the Community Notification Act when a registered sex offender challenges the Department of Corrections'

assessment of the offender's level of danger upon release from incarceration. Each month, the division handles several such cases, which affect the type of notice given to the community in which the sex offender will be released. The division also advises the BCA in registration issues and DNA collection issues, and the Department of Corrections on community notification issues.

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

The division provides assistance to county attorneys in felony appeals. The cases handled in FY 2015 involved, among other crimes: murder, sexual assault, drug distribution and manufacturing, child sexual abuse and felony assault. Examples include:

- ***State v. Rossberg:*** Minnesota Supreme Court affirmed a first-degree murder conviction against the defendant for killing his long-term friend Devan Hawkinson by shooting Mr. Hawkinson in his trailer in Wright County.
- ***State v. Welle:*** Minnesota Supreme Court held that incidents in which the defendant assaulted other people and blamed the victims are admissible in a St. Louis County assault trial in which the defendant claims self-defense.
- ***State v. Ortega:*** Minnesota Supreme Court affirmed first-degree murder conviction in which the defendant and his father beat and stabbed the victim to death in Dodge County.
- ***State v. Kelly:*** Minnesota Supreme Court affirmed a Benton County aggravated robbery conviction in which the victim was beaten unconscious and broke five teeth.
- ***State v. Devans:*** Minnesota Supreme Court affirmed a felony assault conviction in Waseca County in which the defendant beat the victim and threw him down a flight of stairs, causing him to lose consciousness.
- ***White v. Dingle:*** Federal Eighth Circuit Court of Appeals affirmed a St. Louis County murder conviction in which the defendant shot and killed the victim during a drug-related robbery.
- ***State v. Schauer:*** Minnesota Court of Appeals affirmed first, second, and third-degree criminal sexual conduct convictions of a Hubbard County man who abused his teenaged step daughter over several years.
- ***State v. Perez:*** Minnesota Court of Appeals affirmed an aggravated sentence for a second-degree child-abuse murder in which a Norman County man fatally beat his girlfriend's 22-month-old daughter.
- ***State v. Mangun:*** Minnesota Court of Appeals affirmed the third-degree murder conviction of a man who sold heroin to a Morrison County woman who ultimately died of an overdose.
- ***State v. Littlewolf:*** Minnesota Court of Appeals affirmed the second-degree murder conviction of a Duluth man who slashed another man's throat during a fight at a party.

As part of the appellate work, the division also handled federal habeas corpus petitions challenging state-court convictions for non-metro counties during FY 2015. Attorneys in the division appeared on behalf of the State on three habeas petitions in federal district court in FY 2015. Attorneys also assisted prosecutors in responding to federal habeas petitions challenging state court convictions.

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

MEDICAID FRAUD

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

1. Prosecute health care providers committing fraud in the delivery of the Medical Assistance program.
2. Upon request of a county attorney, assist in prosecuting vulnerable adult abuse and neglect (including financial exploitation) in Medicaid funded facilities, and non-Medicaid board and care facilities.

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

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

One case in the past year involved the daughter of a vulnerable adult submitting false claims alleging that she was providing care for her mother (who suffered from Alzheimer's Disease), even though she lived three hours away. The defendant continued submitting false claims for almost a year until she was caught. During one ten-day period, the defendant submitted claims for 120 hours of PCA services that she allegedly provided to her mother in Minnesota, while she was, in fact, on her honeymoon in Florida. The real caregiver, the defendant's sister, was back in Minnesota, struggling under circumstances of caring for a severely disabled vulnerable adult, and getting almost no financial support. After a week-long jury trial, the defendant was found guilty of felony theft by false representation. The federal government will exclude the defendant from providing PCA services, or from working at any entity receiving federal Medicaid funds, for five years.

In another case, an investigation found that an agency owner was submitting claims for nursing supervision of PCAs that falsely represented how long the nursing visits lasted. For almost all of the nursing visits, the owner had no record that the visits occurred. The defendant also submitted claims for PCA services that never actually happened. That scheme included claims for a PCA who was incarcerated during the dates and times he was supposedly out in the community providing PCA services. The defendant was convicted of Medical Assistance Fraud. The defendant will also be excluded for five years from owning or operating a PCPO, or from working at any entity receiving federal Medicaid funds.

The Medicaid Fraud division also intervenes in civil lawsuits under the Minnesota and federal false claims acts. The Minnesota MFCU participated in 20 false claims act cases that resulted in recoveries between July 1, 2014, and June 30, 2015, totaling over \$1.6 million.

PUBLIC SAFETY

The Public Safety Division provides legal representation to the Commissioner of the Minnesota Department of Public Safety at thousands of implied consent hearings each year in which drivers contest the revocation of their licenses due to driving while impaired by alcohol or drugs. The division is responsible for defending actions that resulted in the collection of approximately \$1,192,000 in driver's license reinstatement fees paid to state government over the last fiscal year. Efforts by the division during the last fiscal year to reduce deaths, injuries, and property damage on Minnesota's streets and highways included:

- Handled nearly 5,000 district court Implied Consent proceedings and associated appeals challenging the revocations of driving privileges under Minn. Stat. §§ 169A.50-.53 and Minn. Stat. § 169A.20, subd. 2.
- Defended the state against numerous constitutional and other challenges to the DWI, implied consent, refusal, traffic, and other public safety laws.
- Appeared in 165 district court challenges and resulting appeals to other driver's license cancellations, withdrawals, revocations, suspensions, and license plate impoundments under Minn. Stat. § 169A.60 and § 171.19.
- Provided training on DWI procedures and traffic safety laws for law enforcement officers and prosecutors throughout Minnesota.
- Published the 2015 DWI/Implied Consent Elements Handbook, which is utilized statewide by prosecutors, judges, defense attorneys and law enforcement professionals.
- Argued over 50 appeals to the Minnesota Court of Appeals resulting from district court appearances involving the revocation, suspension, cancellation, or withdrawal of driving privileges.
- Argued to the Federal District Court addressing various federal claims including claims under § 1983 and the Americans with Disabilities Act.

In FY 2015, nearly 20 percent of all driver's license revocations were challenged in court. Today's high challenge rate is the result of the strengthening of DWI laws by the legislature over the years, including adoption of laws allowing for the use an implied consent revocation to

impound license plates, forfeiture of motor vehicles, and enhancement of subsequent criminal offenses to gross misdemeanor and felony violations. Because drivers have much at stake from an alcohol-related license revocation appearing on their driving records, they are more likely to challenge the underlying revocations in the state's district and appellate courts. The increasing complexity of our state's DWI law has resulted in a specialized DWI defense bar that vigorously challenges license revocations. Implementation of the felony DWI law, statutory increases in the length of revocation periods, and availability of ignition interlock use for repeat offenders continue to increase the division caseload.

The 2013 United States Supreme Court decision in *Missouri v. McNeely*, 133 S. Ct. 1552 (2013), in which the Court held that the natural dissipation of alcohol in a driver's blood does not create a *per se* exigency to the warrant requirement, continues to affect the courts. The *McNeely* decision opened the floodgates to Fourth Amendment challenges to Minnesota's Implied Consent Law and Refusal Statute in implied consent hearings. The Minnesota Supreme Court, in *State v. Bernard*, 859 N.W.2d 762 (Minn. 2015), recently rejected a challenge to Minnesota's Refusal Statute, which makes it a crime for a driver to refuse a peace officer's request—made in accordance with the Implied Consent Law—to submit to chemical testing. Attorneys in the *Bernard* case have filed a Petition for a Writ of Certiorari with the United States Supreme Court. Meanwhile, constitutional challenges to Minnesota's DWI and Refusal statutes continue in state court.

The division provides legal services to the Commissioner of Public Safety and various divisions of the Department of Public Safety including the Minnesota State Patrol, Bureau of Criminal Apprehension, State Fire Marshal's Office, Office of Pipeline Safety, Office of Homeland Security and Emergency Management, Office of Justice Programs, Office of Traffic Safety, and the Driver and Vehicle Services Division. Additionally, regulation of the private detective and security industry is enhanced by the division's representation of the Private Detective and Protective Agent Services Board.

The division also provides legal advice and representation to the Gambling Control Board, the Minnesota Racing Commission, and the Alcohol and Gambling Enforcement Division of the Department of Public Safety. These entities issue thousands of licenses and conduct numerous investigations each year, which may result in contested case hearings requiring representation from this division in district court and at the Office of Administrative Hearings. The division provides legal representation to the Minnesota Racing Commission in appeals of disciplinary action taken against horse owners, trainers, and jockeys, and has represented the commission in challenges to commission action at the appellate court level. The division also provides advice to the Alcohol and Gambling Enforcement Division on issues relating to illegal liquor sales, illegal gambling devices, and Indian gaming, and represents the division in taking action against manufacturers and distributors of liquor and gambling equipment.

INFORMATION SERVICES AND CONSUMER

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

REGULATORY LAW

HUMAN SERVICES

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

HEALTH CARE

Division attorneys in the health care area handle matters concerning Minnesota Health Care Programs (MHCP), continuing and long-term care, health care compliance, and benefit recovery. MHCP includes Medical Assistance and MinnesotaCare, which together cover approximately 867,000 Minnesotans. In continuing care, division attorneys represent DHS on matters concerning autism services, aging and adult services, disability services, medical assistance, and personal care assistance. In the compliance and recovery area, division attorneys handle health care compliance matters and recover payments for health care services from providers, responsible third-parties, and estates.

CHILDREN AND FAMILY SERVICES

Division attorneys in the children and family services area handle legal issues relating to public assistance programs, child support, and child protection matters. Public assistance programs include the Minnesota Family Investment Program, the General Assistance program, the Minnesota Supplemental Aid program, the Federal Supplemental Nutrition Assistance Program (SNAP, formerly called Food Stamps) and Group Residential Housing. Division attorneys represent DHS in litigation contesting the operation of these programs. In the child support area, division attorneys defend challenges to child support statutes and programs. In child protection, attorneys represent DHS in matters concerning children's welfare, adoption, foster care, guardianship, tribal issues, and other matters.

MENTAL HEALTH

Division attorneys in the mental health area represent DHS's adult and children's mental health programs, chemical dependency programs, state operated treatment facilities and forensic services, which include regional treatment centers, state operated community facilities, children's and adolescent behavioral health centers, the Minnesota Security Hospital (MSH), and the Minnesota Sex Offender Program (MSOP). Division attorneys represent DHS's interests in a broad spectrum of litigation including Jarvis/Price-Sheppard hearings to authorize forced medication and/or electroconvulsive therapy; Judicial Appeal Panel court trials involving petitions for discharge from persons civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities; Section 1983 civil rights actions in state and federal district and appellate courts; petitions for Writ of Habeas Corpus in state and federal courts; as well as providing legal advice to state-operated facilities administration and staff.

LICENSING

Division attorneys provide representation to the DHS Licensing division in maltreatment cases (abuse, neglect, and financial exploitation) involving personal care provider organizations and programs licensed to provide adult daycare, adult foster care, child foster care, child care, and services for mental health, developmental disabilities, and chemical health. Division attorneys appear in administrative proceedings and district and appellate courts seeking to uphold disqualifications of individuals providing services in programs licensed by DHS, respond to expungement petitions in district court to preserve judicial and administrative records for disqualification, and also appear in administrative proceedings and appellate courts to uphold licensing actions against programs licensed by DHS.

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

- ***Karsjens, et al. v. Jesson, et al.***: this multi-year litigation involves a constitutional challenge to the Minnesota Sex Offender Program. During the past fiscal year, a number of attorneys in the Human Services Division and from other divisions have been involved in defending that program, including taking and defending dozens of depositions, extensive motion practice and discovery, and preparing for and conducting a six-week long trial. Division attorneys continue to defend the program since trial through post-trial briefing, “remedies phase” briefing and arguments, and preparing for a likely appeal.
- ***Supreme Court Appeal Panel***: division attorneys handled numerous hearings before the SCAP on petitions from civilly committed individuals for transfer, provisional discharge, or discharge.
- ***Jarvis/Price-Sheppard Hearings***: division attorneys handled numerous hearings to authorize medically necessary medication and/or therapy for patients who lack the legal capacity to make the decision themselves.
- ***Medicaid Overpayment Recovery***: division attorneys represented the State of Minnesota in connection with the recovery of overpayments in the Medicaid program.
- ***Disqualification Matters***: division attorneys handled disqualification proceedings; for example, defending the state’s disqualification and license revocation of an individual who financially exploited a vulnerable adult in that person’s care.
- ***Doe v. Jesson***: division attorneys are defending the DHS commissioner in a taxpayer lawsuit challenging the constitutionality of tribe notification in voluntary adoption matters involving Indian children.
- ***Expungement of K.R.***: K.R. was convicted of felony assault in the second degree. This Office represented DHS when it objected to K.R.’s petition for expungement of records held by DHS, so that DHS has such information for future background studies for determining suitability for future employment in DHS-licensed facilities. The district court denied the expungement as to all records.
- ***In re Matter of the Welfare of S.T.***: S.T. petitioned to expunge a felony charge of Third Degree Criminal Sexual Conduct, which was ultimately dismissed (or reduced to a gross misdemeanor) and received as a juvenile. This Office represented DHS in its objection to S.T.’s expungement, and the District Court denied S.T.’s motion.

- ***Joseph Anthony Favors v. Lucinda E. Jesson, Commissioner of Human Services:*** Mr. Favors, who is civilly committed to the Minnesota Sex Offender Program as a sexually dangerous person and as a sexual psychopathic personality, petitioned for transfer to a less secure facility, provisional discharge, and discharge from civil commitment. This Office represented the Commissioner of DHS who opposed Mr. Favors's petition, and successfully moved to dismiss the petition and defended the decision on appeal.
- ***Thomas Edward Kittrell v. Lucinda E. Jesson, Commissioner of Human Services:*** Mr. Kittrell is civilly committed to the MSOP as a sexually dangerous person and as a sexual psychopathic personality. He petitioned for transfer to a less secure facility, provisional discharge and discharge from civil commitment. This Office represented the Commissioner who opposed Mr. Kittrell's petition, and was successful getting the petition dismissed.
- ***Appeal of My Brother's Keeper:*** DHS issued a notice of agency action to recover an overpayment of because a personal care assistant employed by My Brother's Keeper was billing DHS even though she was working at another job. The PCA appealed, and this Office successfully defended the Commissioner's action.
- ***George Obara v. Department of Human Services:*** DHS disqualified Mr. Obara from providing services that required a background study under Minnesota law based on two convictions for third degree assault and terroristic threats. Mr. Obara appealed, and this Office successfully defended the Commissioner's determination.
- ***Community Involvement Programs Appeal (OAH Docket No. 82-1800-31614):*** This Office represented the Commissioner in a contested case involving maltreatment of a vulnerable adult in which Community Involvement Programs was held responsible. The Administrative Law Judge recommended affirming the Commissioner's determination.
- ***Appeal of Carmal McCauley:*** This Office successfully defended the Commissioner's revocation of a child foster care license based on licensing violations.
- ***In Re Marie Marx v. Minnesota Department of Human Services and Wabasha County Human Services:*** Ms. Marx was the beneficiary of a trust available for her financial support. She appealed the denial of Medical Assistance benefits, which was based on the availability of her trust funds. This Office represented the Commissioner in an appeal to the district court, and the district court affirmed the Commissioner's decision.
- ***In Re The Appeal for Medical Assistance Long Term Care Services for Michael Schlentz:*** The Commissioner denied Mr. Schlentz's application for Medical Assistance because he had excess assets in the form of a trust. This Office represented the Commissioner in an appeal to the district court, which affirmed the Commissioner's decision.

CHARITIES

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

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

The division also receives notice of the dissolution, merger, consolidation, or transfer of all or substantially all assets of Minnesota charitable nonprofit corporations. It received approximately 110 such notices in the last fiscal year. The division reviews these notices to ensure that charitable assets are protected during these transactions and used for the purposes for which they were solicited and held.

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

Another oversight function of the division is to educate officers and directors of nonprofit organizations about nonprofit and charities laws in Minnesota. The division provides education to nonprofits and charities on important topics such as fiduciary duties for board members, governance issues, and solicitation and registration requirements. Typical audiences consist of: nonprofit board members, community members, leaders and volunteers, certified public accountants, and attorneys who represent nonprofits.

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

Minnesota law requires charitable organizations and professional fundraisers to register and file annual reports with the Attorney General's Office. In the last fiscal year, approximately \$631,765 in registration-related fees were deposited to the State's general fund. At the end of the fiscal year, the division had registered and is maintaining public files for more than 10,800 charitable (soliciting) organizations, more than 2,800 charitable trusts, and more than 375 professional fundraisers. The charitable organizations and charitable trusts that the division regulates held more than \$388 billion in assets, and had \$188 billion in total revenue the prior year. The information from these files allows the donating public to review a charitable

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

The division also enforces State laws relating to charities and nonprofits. The following are examples of investigations and suits brought or resolved in the 2015 fiscal year by the Charities division:

- The Charities division sued Savers, a prominent retail thrift store chain, for allegedly deceptive solicitation practices and acting as an unregistered professional fundraiser. The lawsuit alleges that Savers failed to disclose to donors that most of their charitable contributions went to the for-profit Savers stores—not charity. The case settled when Savers agreed to pay \$1.8 million to its charitable partners, overhaul its solicitations practices, provide better disclosures to Minnesota donors, and register as a professional fundraiser.
- The Charities division sued Epilepsy Foundation of Minnesota, Inc. (EFM), which was one of Savers charitable partners. EFM allegedly hired Savers to act as its professional fundraiser despite Savers failing to register as such with the state. EFM also allegedly failed to exercise due diligence to oversee these solicitation activities by Savers on its behalf, and filed inaccurate paperwork with the State failing to disclose its relationship with Savers. EFM settled with the State by agreeing to, among other things, provide better disclosures to donors about its relationship with Savers, the value of their donation retained by EFM as opposed to Savers, and properly oversee its solicitation activities in Minnesota.
- The Charities division, in conjunction with the FTC and other state attorneys general, sued the Cancer Fund of America and related entities and persons (collectively "CFA") for charitable solicitation fraud. The Complaint alleged that CFA engaged in a massive, nationwide fraud by raising more than \$187 million from donors across the United States, including in Minnesota, by telling them that their contributions will help people suffering from cancer. Instead, Defendants allegedly spent the overwhelming majority of donated funds on themselves, their families and friends, and their fundraisers. This case remains pending in federal court in Arizona.

CIVIL

The Civil division investigates violations of and enforces State laws. The division conducts investigations, serves investigative requests, and takes action where appropriate to stop and deter fraud in the marketplace. The following are examples of investigations and suits brought or resolved in the 2015 fiscal year by the Civil division:

- The division sued Apex Merchant Group, LLC, for using “bait and switch” tactics through which Apex promised small businesses it could save them money on credit card processing services, but then hit them with higher undisclosed fees. The division alleged that, in some cases, Apex fraudulently altered the terms of signed contracts by later inserting new pages into the contract that contained higher rates and/or cancellation fees not agreed to by small businesses, locking them into long-term contracts. In settlement, Apex agreed to cancel small businesses’ contracts with Apex and provide a substantial monetary payment to the State to provide refunds to small businesses.
- The division sued Heritage Partners, LLC and its owner for operating a “trust mill” through which senior citizens and future retirees were charged almost \$2,300 for living trusts, wills, and related documents that were supposed to be prepared by an “experienced estate planning attorney.” Instead, Heritage had the legal documents prepared by an Arizona man—also named as a defendant in the lawsuit—who was not licensed as an attorney in Minnesota or Arizona and who was previously enjoined from setting up sham business trusts in a lawsuit brought by the federal government. The Court ordered a judgment against the defendants, which included a permanent injunction and provided for a substantial monetary judgment for the State.
- The division investigated The Phoenix Companies, Inc., regarding Heritage Partners’ sales of Phoenix annuities to seniors during the “trust mill” activities mentioned above. The division alleged that Heritage agents often sold annuities to seniors, some of which were unsuitable for or not fully or accurately described to consumers. In settlement, Phoenix agreed to a claims review process for Minnesota seniors. The settlement has resulted in millions of dollars in rescission offers for seniors.
- The division sued Enterprise Financial Group, Inc., a Texas company that issued extended auto warranties to Minnesota consumers. Mailers were sent to consumers that often contained information about the consumer’s year, make, and model of car, leading some people to believe the auto warranty company was affiliated with their manufacturer. The division also alleged that EFG delayed in issuing refunds owed to Minnesota consumers and failed to follow Minnesota law. In settlement, EFG agreed to provide refunds and penalty payments to consumers.

APPENDIX A: SERVICE HOURS
By Agency or Political Subdivision for FY 2015

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<i>Partner Agencies</i>				
Administration--Risk Management		3,783.1		\$ 407,254.90
AURI		4.9		\$ 632.10
Corrections (3)	2,238.0	2,239.0	\$ 288,785.00	\$ 288,784.60
Education Department	1,380.0	1,667.6	\$ 178,020.00	\$ 205,283.60
Environmental Quality Board		344.4		\$ 44,247.80
Gambling Control Board		49.0		\$ 6,321.00
Health		6,596.0		\$ 840,177.20
Housing Finance Authority	2,750.0	2,375.3	\$ 354,750.00	\$ 306,268.70
Human Services	21,735.0	24,876.3	\$ 2,712,465.00	\$ 3,137,685.30
Iron Range Resources & Rehabilitation		20.2		\$ 1,880.80
Medical Practices Board	7,600.0	4,405.8	\$ 713,600.00	\$ 396,703.00
Minnesota Racing Commission		318.5		\$ 41,086.50
Minnesota State Retirement System		594.5		\$ 75,588.50
MnSCU		6,366.8		\$ 755,046.40
MnSURE		14.8		\$ 1,717.80
Natural Resources		5,108.3		\$ 650,270.70
Petroleum Tank Release Compensation Board		508.0		\$ 65,532.00
Pollution Control	8,000.0	8,139.2	\$ 1,032,000.00	\$ 1,048,657.60
Public Employees Retirement Association		275.9		\$ 35,579.50
Public Safety (3)	3,600.0	3,600.0	\$ 464,400.00	\$ 464,400.00
Revenue (3)	4,500.0	4,500.0	\$ 580,500.00	\$ 580,500.00
Teachers Retirement Association		172.3		\$ 22,186.10
Transportation		11,501.9		\$ 1,462,372.10
TOTAL PARTNER AGENCIES	51,803.0	87,461.8	\$ 6,324,520.00	\$ 10,838,176.20
<i>Health Boards/Offices</i>				
Behavioral Health & Therapy Board		92.0		\$ 11,676.60
Chiropractic Board		1,781.0		\$ 170,623.80
Dentistry Board		2,943.6		\$ 272,534.60
Dietetics & Nutrition Practice Board		13.5		\$ 1,741.50
Emergency Medical Services Regulatory Board		397.8		\$ 46,966.20
Health Professionals Services Program		11.2		\$ 1,444.80
Licensed Drug & Alcohol Counselor Program		911.3		\$ 85,669.30
Marriage & Family Therapy Board		830.8		\$ 75,551.60
Nursing Board		7,056.1		\$ 756,038.10
Nursing Home Administrators Board		61.9		\$ 6,964.30
Optometry Board		265.9		\$ 22,718.50
Pharmacy Board		1,669.1		\$ 160,817.10
Physical Therapy Board		799.5		\$ 72,198.30
Podiatry Board		194.8		\$ 23,888.00
Psychology Board		1,461.8		\$ 151,144.80
Social Work Board		2,132.6		\$ 186,377.00
Veterinary Medicine Board		465.7		\$ 48,220.10
SUBTOTAL		21,088.6		\$ 2,094,574.60

APPENDIX A: SERVICE HOURS
By Agency or Political Subdivision for FY 2015

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<i>Other State Agencies/Political Subdivisions</i>				
Accountancy Board		111.6	\$	14,373.20
Administration Department		697.4	\$	70,824.60
Administrative Hearings Office		23.2	\$	2,992.80
Agriculture Department		807.9	\$	102,461.70
Amateur Sports Commission		102.8	\$	13,261.20
Animal Health Board		137.3	\$	16,267.50
Architecture Board		227.9	\$	29,399.10
Asian Pacific Minnesotans Council		5.3	\$	683.70
Assessors Board		0.7	\$	90.30
Barber Board		32.5	\$	4,192.50
Black Minnesotans Council		547.9	\$	64,177.30
Campaign Finance Board		283.5	\$	36,124.90
Capitol Area Architectural Planning Board		12.8	\$	1,651.20
Center for Arts Education		181.3	\$	23,213.70
Chicano/Latino Peoples Affairs Council		14.9	\$	1,852.50
Client Security Board		357.5	\$	43,693.10
Commerce Department		9,714.1	\$	1,243,096.50
Corrections Department (3)		4,805.1	\$	536,645.30
Corrections Department/Community Notification		2,076.1	\$	227,489.50
Cosmetology Examiners Board		89.8	\$	11,584.20
Crime Victims Reparations Board		144.4	\$	17,902.60
Disability Council		1.7	\$	219.30
Employment & Economic Development Department		3,182.3	\$	277,516.90
Executive Council		4.4	\$	567.60
Explore Minnesota Tourism		18.2	\$	1,918.60
Faribault Academies		15.2	\$	1,850.60
Firefighter Training & Education Board		30.1	\$	3,882.90
Governor's Office		221.1	\$	28,336.30
Higher Education Services Office		197.4	\$	25,267.40
Human Rights Department		859.9	\$	106,420.50
Judiciary Courts		528.2	\$	67,702.80
Labor and Industry Department		5,379.7	\$	691,023.30
Land Exchange Board		1.9	\$	245.10
Law Examiner's Board		306.7	\$	38,868.30
Legislature		51.8	\$	6,682.20
Legislature Auditor		4.5	\$	580.50
Mediation Services Bureau		82.5	\$	10,642.50
Military Affairs Department		218.6	\$	28,199.40
Minnesota Management & Budget		604.4	\$	73,988.80
MN.IT Services Office		176.9	\$	15,836.90
Ombudsman for Mental Health & Developmental Disabilities		16.9	\$	2,180.10
Ombudsperson for Families		26.2	\$	3,379.80
Peace Officers Standards and Training Board		214.9	\$	27,722.10
Public Defender, Local		50.0	\$	6,450.00
Public Defender, State		37.7	\$	4,764.70
Public Safety Department (3)		24,678.6	\$	2,697,690.80
Public Utilities Commission		3,868.6	\$	493,313.20
Revenue Department (3)		8,849.5	\$	1,137,664.70
Rural Finance Authority		21.5	\$	2,773.50
School Administrators Board		195.3	\$	25,193.70
Secretary of State		1,618.7	\$	207,460.90
Sentencing Guidelines Commission		27.5	\$	3,547.50
State Arts Board		5.7	\$	735.30
State Auditor		21.3	\$	2,747.70
State Fair Board		1.5	\$	193.50
State Historical Society		4.0	\$	516.00
State Investment Board		288.5	\$	35,870.90
State Lottery		22.1	\$	2,410.10
Tax Court		4.2	\$	541.80
Teaching Board		856.1	\$	108,754.90
Veterans Affairs Department		88.2	\$	10,838.40
Veterans Homes Board		296.0	\$	37,459.00
Water & Soil Resources Board		252.4	\$	32,559.60
Zoological Board		58.3	\$	6,987.10
SUBTOTAL		73,763.2	\$	8,693,482.60

APPENDIX A: SERVICE HOURS
By Agency or Political Subdivision for FY 2015

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
OTHER GOVERNMENT				
Aitkin County Attorney		143.7	\$	13,589.90
Anoka County Attorney		645.0	\$	67,603.00
Becker County Attorney		908.9	\$	97,296.10
Beltrami County Attorney		101.1	\$	9,503.90
Benton County Attorney		506.2	\$	56,280.80
Big Stone County Attorney		97.1	\$	9,596.90
Brown County Attorney		1,225.5	\$	107,194.50
Carlton County Attorney		69.1	\$	7,115.90
Cass County Attorney		486.8	\$	58,592.20
Chippewa County Attorney		746.0	\$	77,790.00
Chisago County Attorney		22.1	\$	2,618.90
Clearwater County Attorney		23.5	\$	1,755.50
Cottonwood County Attorney		108.3	\$	13,825.70
Crow Wing County Attorney		2.8	\$	198.80
Dakota County Attorney		772.4	\$	73,220.60
Douglas County Attorney		306.6	\$	37,434.40
Faribault County Attorney		145.8	\$	18,402.20
Fillmore County Attorney		106.8	\$	13,777.20
Goodhue County Attorney		61.2	\$	7,894.80
Grant County Attorney		115.7	\$	14,809.30
Hennepin County Attorney		12,924.7	\$	1,143,349.10
Houston County Attorney		44.2	\$	5,701.80
Hubbard County Attorney		626.7	\$	62,545.30
Isanti County Attorney		132.4	\$	17,079.60
Itasca County Attorney		147.3	\$	11,780.70
Jackson County Attorney		97.4	\$	12,564.60
Kanabec County Attorney		844.9	\$	94,167.30
Kandiyohi County Attorney		649.7	\$	67,600.30
Koochiching County Attorney		81.3	\$	10,255.70
Lac qui Parle Attorney		92.9	\$	11,723.10
Le Sueur County Attorney		373.5	\$	38,002.50
Lincoln County Attorney		68.6	\$	8,849.40
Lyon County Attorney		376.3	\$	38,102.70
Mahnomen County Attorney		202.7	\$	21,363.30
Marshall County Attorney		46.4	\$	5,985.60
Martin County Attorney		28.1	\$	2,029.90
Meeker County Attorney		80.3	\$	10,039.70
Mille Lacs County Attorney		1,397.7	\$	138,253.30
Morrison County Attorney		834.5	\$	79,236.30
Mower County Attorney		700.2	\$	76,365.20
Nicollet County Attorney		212.4	\$	20,926.80
Nobles County Attorney		341.4	\$	40,038.60
Norman County Attorney		1.0	\$	71.00
Olmsted County Attorney		32.1	\$	3,763.90
Otter Tail County Attorney		852.2	\$	83,862.80
Pennington County Attorney		222.1	\$	27,113.90
Pine County Attorney		80.0	\$	10,320.00
Polk County Attorney		197.8	\$	20,847.20
Pope County Attorney		151.4	\$	19,240.60
Ramsey County Attorney		3,286.0	\$	292,912.60
Redwood County Attorney		61.0	\$	7,869.00
Renville County Attorney		24.8	\$	1,818.80
Rice County Attorney		127.7	\$	16,038.30
Rock County Attorney		192.6	\$	21,394.40
Roseau County Attorney		310.3	\$	36,229.70
Scott County Attorney		303.7	\$	34,090.70
Sherburne County Attorney		175.1	\$	22,309.50
Sibley County Attorney		9.7	\$	845.30
St. Louis County Attorney		931.0	\$	117,042.40
Stearns County Attorney		709.8	\$	89,882.20
Steele County Attorney		249.9	\$	31,570.10
Stevens County Attorney		26.5	\$	1,939.50
Swift County Attorney		0.8	\$	56.80
Todd County Attorney		1,121.1	\$	114,809.90
Wabasha County Attorney		153.3	\$	16,748.10
Wadena County Attorney		82.4	\$	10,397.60
Waseca County Attorney		176.9	\$	15,715.10
Washington County Attorney		659.0	\$	61,869.00
Watsonwan County Attorney		151.8	\$	14,478.20
Wilkin County Attorney		17.2	\$	2,218.80
Wright County Attorney		352.7	\$	41,792.10
Yellow Medicine County Attorney		592.9	\$	51,399.10

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By Agency or Political Subdivision for FY 2015

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
Association of County Attorneys		92.0		\$ 11,868.00
Various Local Governments		113.1		\$ 14,502.90
SUBTOTAL		38,356.1		\$ 3,799,478.90
TOTAL PARTNER/SEMI-PARTNER AGENCIES (from page A-1)		87,461.8		\$ 10,838,176.20
TOTAL NON-PARTNER AGENCIES SUBDIVISIONS		133,207.9		\$ 14,587,536.10
GRAND TOTAL HOURS/EXPENDITURES		220,669.7		\$ 25,425,712.30

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 \$129.00 and Legal Assistant \$71.00

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

**APPENDIX B: SPECIAL ATTORNEY EXPENDITURES
FOR FY 2015, BY AGENCY/POLITICAL SUBDIVISION**

AGENCY/POLITICAL SUBDIVISION	Amount
Administration	\$ 742,538.59
Attorney General	\$ 2,280.00
Minnesota Management & Budget	\$ 130,341.69
MnDOT	\$ 1,548.75
MnSCU	\$ 10,186.51
MNsure	\$ 40,464.18
Revenue	\$ 107,402.40
TOTAL	\$ 1,034,762.12

**APPENDIX B: SPECIAL ATTORNEY EXPENDITURES
BOND COUNSEL FOR FY 2015, BY AGENCY/POLITICAL SUBDIVISION**

AGENCY/POLITICAL SUBDIVISION	Amount
Agricultural and Economic Development Board	\$ 4,291.99
Commerce	\$ 9,772.39
Housing Finance Agency	\$ 320,798.41
Iron Range Resources and Rehabilitation Board	\$ 9,350.32
Minnesota Higher Education Facilities Authority	\$ 127,644.02
Minnesota Management & Budget	\$ 200,660.74
MnSCU	\$ 26,686.28
Office of Higher Education	\$ 38,578.35
Public Facilities Authority	\$ 17,970.00
Rural Finance Authority	\$ 622.40
TOTAL	\$ 756,374.90
NOTE: Certain bond fund counsel are paid from proceeds.	