

State of Alaska Department of Law

Michael C. Geraghty, Attorney General

2012
Annual Report

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Message From the Attorney General

Dear Governor Parnell and legislators:

The eighteenth century political philosopher Edmund Burke opined that “[n]o other profession is more closely connected with actual life than the law. It concerns the highest of all temporal interests of man—property, reputation, the peace of all families, the arbitrations and peace of nations, liberty, life even, and the very foundations of society.”

Times have changed, but Burke’s observation still rings true. The dedicated attorneys and staff at the Department of Law are committed to improving the quality of life for our families and communities, and they work hard to make a positive difference in the lives of Alaskans.

Our mission includes four core elements: First, we protect Alaskans. The Department’s criminal attorneys prosecute crime statewide, seeking justice for victims and striving to secure a peaceful and safe state. The Department also plays an active role in the Governor’s comprehensive strategy to end the scourge of sexual assault and domestic violence in Alaska.

Second, the Department of Law works to promote economic opportunities by using all available legal tools to fulfill the state’s constitutional obligation to responsibly develop Alaska’s natural resources. The Department operates on many fronts in this mission; we provide legal counsel to the state’s resource agencies, affirmatively challenge legal obstacles to development, and defend against attacks to state development decisions.

Third, we protect the state’s fiscal integrity. We assure that citizens and companies operating in Alaska pay all due taxes, royalties, and other funds. In addition, we defend the state against allegations of tort, breach of contract and other claims for damages. Significantly, in November of this year we recovered \$255 million from BP (Alaska) Inc. for lost royalties and environmental harm caused by pipeline corrosion on the North Slope.

Finally, we are actively engaged in promoting good government. We defend state law and the Alaska Constitution. We also work with the administration to improve all aspects of life in Alaska, including social services, infrastructure, transportation, education, consumer protection, fish and wildlife management, child protection, professional licensing, environmental protection, access to and development of resources, and much more.

We accomplish all of this with a dedicated staff that is committed to Alaska. Edmund Burke also observed that “[t]he legal profession renders its practitioners acute, inquisitive, dexterous, prompt in attack, ready in defense [and] full of resources.” That aptly describes the men and women who work in the Department of Law. It is an honor to be able to lead this outstanding group of Alaskans.

Michael C. Geraghty
Attorney General

Department of Law Organizational Chart

Michael Geraghty, Attorney General

Criminal Division

Richard Svobodny,
Deputy Attorney General
John Skidmore,
Division Director

Appeals

Douglas Kossler,
Solicitor General of Criminal Affairs

Special Prosecution

Robert Henderson,
Chief Assistant Attorney General

1st Judicial District

David Brower,
Juneau and Sitka District Attorney
Stephen West,
Ketchikan District Attorney

2nd Judicial District

John Earthman,
Nome and Kotzebue District Attorney

J. Michael Gray,
Barrow District Attorney

3rd Judicial District

Sharon Marshall,
Anchorage and Dillingham District Attorney
Scot Leaders,
Kenai District Attorney

Stephen Wallace,
Kodiak District Attorney

Roman Kalytiak,
Palmer District Attorney

4th Judicial District

June Stein,
Bethel District Attorney
J. Michael Gray,
Fairbanks District Attorney

Administrative Services Division

David Blaisdell, Director
Loretta Withington,
Deputy Director

Management & Financial Forecasting

Loretta Withington,
Deputy Director

Budgeting

Tracy Maher,
Budget Analyst

Fiscal and Accounting

Deborah Idone,
Finance Officer

Procurement

Patricia Hull,
Procurement Specialist III

Timekeeping & Billing

Loretta Withington,
Deputy Director

Information Services

Jennifer McCaul,
Information
Technology Manager

Civil Division

James Cantor, Deputy Attorney General
Nancy Gordon, Civil Division Chief

Child Protection

Carla Raymond,
Chief Assistant Attorney General

Collections & Support

Stacy Steinberg,
Chief Assistant Attorney General

Commercial & Fair Business

Signe Andersen,
Chief Assistant Attorney General

Environmental

Steve Mulder,
Chief Assistant Attorney General

Human Services

Stacie Kraly,
Chief Assistant Attorney General

Information & Project Support

Alan Birnbaum,
Chief Assistant Attorney General

Labor & State Affairs

Margie Vandor,
Chief Assistant Attorney General

Legislation & Regulations

Deborah Behr,
Chief Assistant Attorney General

Natural Resources

Elizabeth Barry,
Chief Assistant Attorney General

Oil, Gas & Mining

Martin Schultz,
Chief Assistant Attorney General

Opinions, Appeals & Ethics

Joanne Grace,
Chief Assistant Attorney General

Regulatory Affairs & Public Advocacy

Steve DeVries,
Chief Assistant Attorney General

Torts & Workers' Compensation

Susan Cox,
Chief Assistant Attorney General

Transportation

Jeff Stark,
Chief Assistant Attorney General



Civil Division

The Civil Division provides legal advice to the governor, executive branch agencies, and—upon request—the legislative and judicial branches. It defends, prosecutes, and oversees all civil litigation to which the State is a party.



James Cantor is the Deputy Attorney General overseeing the Civil Division.

In 2012, the Civil Division participated in a number of lawsuits involving federal overreach. The Tenth Amendment to the U.S. Constitution declares, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” This proclamation defends the scope of federalism and embodies state’s rights. Like other states, Alaska often finds itself on the receiving end of federal encroachment and overreach. The following examples represent the range of federalism issues the State faced last year.

Voting Rights Act – The federal Voting Rights Act has played a significant role in eliminating discriminatory voting practices, a goal the State of Alaska strongly supports. However, one provision of the Act imposes a disproportionate burden on a handful of states, including Alaska, by requiring them to gain federal pre-approval—known as “preclearance”—of any changes to their voting laws. The federal government imposed this extra burden on these states based on voting practices in the 1960’s, and no attempt has been made to update the law to reflect current conditions. The preclearance requirement unnecessarily treats Alaska differently from other states, and causes uncertainty and delays during elections. For these reasons, the State is challenging the constitutionality of the preclearance requirement in federal district court and filing an amicus brief in a related U.S. Supreme Court case.

Emission Control Area – Under a treaty amendment accepted by Secretary of State Hillary Clinton, ships travelling in a new emission control area (ECA) that includes Alaskan waters must use expensive low-sulfur fuel. The ECA covers waters within 200 miles of the southcentral and southeastern Alaska coasts. The ECA negatively impacts Alaskans by increasing the cost of goods. The State challenged the ECA because there is no environmental justification for Alaska’s coverage, particularly given that Alaska already enjoys air quality that is generally cleaner than the EPA’s national standards. The State asserts that under the U.S. Constitution, the extension of the ECA to Alaska cannot be imposed through unilateral action by the Secretary of State, but only by Congress or by the EPA through formal rulemaking.

Bristol Bay Watershed Assessment – The State believes that Pebble Mine should be subjected to the same stringent permitting process as any other resource development project. Instead, due to controversy surrounding the project, the federal government has taken the unprecedented step of conducting a watershed assessment of Bristol Bay that could preemptively stop the mine before any specific mine development and environmental protection plan has been formally submitted. The Department of Law continues to monitor the process and submit comments to ensure that the State’s voice is heard. Although agencies may ultimately determine that the planned mine cannot coexist with the pristine salmon habitat in Bristol Bay, the State believes the statutory and regulatory procedures already in place should be used to make this determination.

Sackett v. EPA – Alaska wrote a U.S. Supreme Court amicus brief supporting a couple, Mr. and Mrs. Sackett, stymied by EPA overreach when attempting to build a house on a small parcel of land in Idaho. The EPA ordered the Sacketts to halt construction and remove existing improvements, alleging that their lot contained navigable waters under the Clean Water Act. When the Sacketts attempted to obtain judicial review of this order, the district court and the Ninth Circuit refused to hear the case. Both courts held that to obtain judicial review, the Sacketts would have to violate the order and then wait for the EPA to bring an enforcement action against them. The U.S. Supreme Court reversed, holding that the Sacketts can obtain judicial review of their claim that the EPA was wrong.

Child Protection

Protecting Alaska's children is one of the most important tasks of the Department. The Child Protection Section helps combat child abuse and neglect in confidential Child in Need of Aid (CINA) cases. Child Protection attorneys help the Office of Children's Services (OCS) (1) implement plans to safely return children home or (2) take legal action to terminate parental rights, allowing for placement of children in other permanent homes.

Accomplishments/Highlights

- Last year the section worked on approximately 2,500 ongoing CINA cases with the goal of achieving permanency for children, whether through reunification with their families or other placements, such as adoption or guardianship.
- The section continued to improve forms and institute new practices to comply with the federal Adoption and Safe Families Act, and to more efficiently support OCS.
- The section continued to participate in the Family CARE (Community Assisted Recovery Efforts) Court. The project coordinates the efforts of the Department of Law, Department of Administration's Offices of Public Advocacy and Public Defender, and the Court System. The program directly engages and assists parents of children who have been the subject of CINA petitions.
- The section continued to participate in Family Preservation Court (FPC). FPC is a therapeutic court for CINA cases in which substance abuse is the primary issue. With a goal of treatment completion and dismissal within six months, the court provides immediate, front-loaded services to families with minimal child protection history. The FPC "team" consists of one judge, one court-employed project coordinator, one Assistant Attorney General, one guardian ad litem, one Assistant Public Defender, two conflict attorneys, and several treatment providers. Expansion of the program is under consideration, which would help more families resolve their problems quickly without the need for continued foster care.



Collections and Support

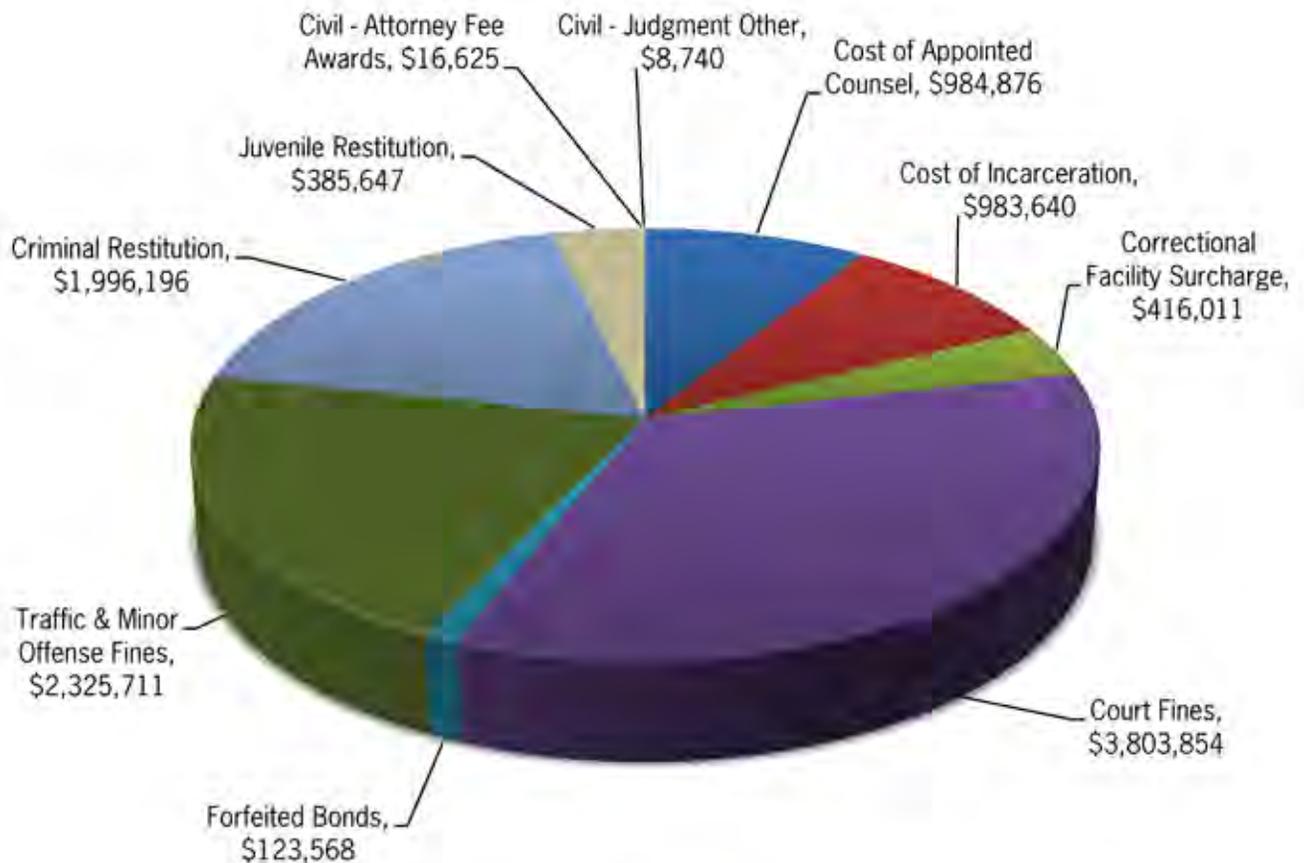
The Collections and Support Section divides its duties between the Collections Unit and the Child Support Unit.

The efforts of the Collections Unit generate a positive return on investment. In FY 2012, the unit collected more than \$11 million, a roughly 4% increase over FY 2011. Of the total collected, about \$9.2 million resulted from garnishment of debtors' permanent fund dividends (PFDs).

The unit collected approximately \$2.3 million in restitution payments owed to crime victims, up 29% from FY 2011. The unit also collected surcharges and incarceration costs for the Department of Corrections (approximately \$1.4

million); costs of appointed counsel for the Public Defender Agency (almost \$1 million); and more than \$6.2 million in court fines, minor offense fines, forfeited bonds, and civil attorney's fee awards.

The Child Support Unit helps the Department of Revenue's Child Support Services Division enforce child support orders. The unit brings legal actions to collect child support, establish paternity and require parents to apply for PFDs, so the PFD can be garnished and directed towards child support.



Collections Unit FY2012
Total \$11,044,869

Commercial and Fair Business

The Commercial and Fair Business Section, which includes the Consumer Protection and Antitrust Unit, represents and advises 15 different divisions, commissions, and public corporations within the Departments of Administration, Revenue, Education and Early Development, Natural Resources, and Commerce, Community, and Economic Development. The section also represents and advises 20 professional licensing boards and commissions.

The Consumer Protection and Antitrust Unit investigates and brings enforcement actions against businesses that engage in unfair and deceptive trade practices. In 2012, the unit received and processed over 400 consumer complaints, of which the majority related to telemarketing “do not call” issues, retail sales, auto sales and repair, debt collection, credit practices, and tourism. The unit also participated in many multi-state enforcement actions resulting in sizeable recoveries against national companies whose activities harmed Alaskans. The unit’s efforts resulted in collection of \$13 million for consumers and the State. Below are notable results achieved by the unit last year.

Hilcorp Energy Settlement

- The State resolved an antitrust investigation into the sale of Marathon Oil Company’s Cook Inlet natural gas assets to Hilcorp Energy, LLC.
- The sale gives Hilcorp control of about 70% of the natural gas currently produced in Cook Inlet. Most of the gas is sold to southcentral utilities for space heat and electrical generation.
- The State and Hilcorp entered a consent decree with the court to protect consumers against potential monopoly pricing. The decree caps the price of natural gas sold by Hilcorp for five years and restricts the sale of natural gas for export from Alaska until local needs are met.

- The decree allows Hilcorp to explore for new gas reserves and better develop existing reserves to increase the overall production of natural gas in the Cook Inlet.

National Mortgage Settlement

- The State participated in the national mortgage settlement, a historic \$25 billion settlement with the nation’s five largest mortgage servicers—Bank of America, Chase, Citi, Ally/GMAC, and Wells Fargo—over abuses in their mortgage servicing and foreclosure practices.
- The total value of the settlement to the State and Alaskan consumers is estimated to be \$11 million.
 - The State will receive a total of \$4.3 million.
 - Alaskan homeowners will benefit over the next three years from (1) an estimated \$1 million in benefits from loan modifications and other direct relief; (2) an estimated \$1.7 million in cash payments to homeowners who lost homes to foreclosure from 2008 through 2011 and who suffered servicing abuses; and (3) an estimated \$4 million in refinanced loans to “underwater” borrowers.
- With the backing of a federal court order and the oversight of an independent monitor, the settlement is intended to stop future servicing and foreclosure misconduct.

“Alaska is fortunate to have missed the real estate crash affecting many states in the Lower 48. At the same time, some Alaskan families, through no fault of their own, are struggling to stay in their homes. This national mortgage settlement not only provides financial relief to Alaskan borrowers, but puts in place important new protections for homeowners in the form of mortgage servicing standards.”
– Attorney General Michael Geraghty

NCO Financial

- Alaska, with nineteen other states, reached a settlement with debt collection company NCO Financial Systems, Inc. (NCOF). The settlement resolves allegations that NCOF engaged in deceptive and unfair debt collection and credit reporting practices.
- Under the settlement, NCOF agreed to comply with state consumer protection laws, the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. The settlement also requires NCOF to provide consumers with notice of their rights under state and federal law, and allows the states to monitor NCOF's compliance with the agreement.
- NCOF agreed to pay the states \$575,000; Alaska's share was \$26,562. NCOF also agreed to set aside a total of \$50,000 for Alaskan consumers who paid debts they did not owe or overpaid interest.

Average Wholesale Price (AWP) Litigation

- The AWP litigation, which was initiated in 2006 against 41 pharmaceutical companies, alleges that the pharmaceutical manufacturers reported false drug prices, known as "average wholesale prices." Providers consult these prices when determining reimbursement rates from insurers and Medicaid agencies.
- As a result of the inflated AWP's, the State's Medicaid agency reimbursed pharmacies and other providers more than they actually paid for the drugs.
- To date, the State has settled with most of the 41 original defendants. In 2012, the litigation yielded settlements over \$7 million (GSK - \$4.1 million; Merck - \$2.4 million; Watson - \$1 million).
- Trials have been scheduled for the remaining defendants in late 2013.



Environmental

The Environmental Section plays a significant role in protecting Alaska's environment. The section primarily provides advice and legal representation to the Department of Environmental Conservation relating to oil spills, contaminated site cleanups, and enforcement of air and water quality laws. One notable success last year was the final resolution of an enforcement action that began in 2006 when oil leaked from pipelines on the North Slope.

Arbitration of 2006 BP Pipeline Spills and Shutdown Cases

- The State claimed BP Exploration (Alaska) allowed pipelines to corrode, resulting in spills and partial shutdowns of the Prudhoe Bay oilfield production.
- After a four-week arbitration, the State received \$255 million for environmental damages and lost revenues.

Human Services

The Human Services Section advises and represents all of the divisions in the Department of Health and Social Services (DHSS). The section provides legal services and advice on all licensing matters, including assisted living home, foster home, and childcare licensing. It advises DHSS about changes in federal law and steps necessary to maintain maximum federal participation in public benefit programs. The section helps DHSS with all certificate of need matters, public health matters and third party recovery and estate recovery under the Medicaid program, as well as all matters related to Medicaid provider audits. It advises and represents Adult Protective Services on items such as initiating guardianships and conservatorships, and addressing issues relating to the Pioneer Homes. Finally, the section acts as legal counsel for the Alaska Psychiatric Institute and initiates petitions for involuntary mental commitment throughout the State.

Accomplishments/Highlights

- In 2012, the section was involved in fifteen superior court cases alleging both state and federal constitutional due process claims. Most of those cases included requests for temporary restraining orders or preliminary injunctions, sometimes requiring accelerated motion practice.
- Notably, the courts certified six of those cases as class actions. Such cases can be intense, and once they are resolved, section attorneys provide extensive advice to help the agencies implement decisions and avoid future litigation.

Information and Project Support

The Information and Project Support Section advises the Department and other agencies on the management, inter- and intra-agency exchange, and disclosure of information and records.

Accomplishments/Highlights

- Last year the section continued to counsel agencies on responding to requests under the Alaska Public Records Act. The section's assistance included ensuring requests are clear; records are preserved; deadlines are met; extensions are appropriate; chargeable costs are estimated and paid in advance when appropriate; searches are reasonable; protected information is properly handled; denials comply with the regulations; and appeals are properly addressed.
- The section also worked with the Department of Administration to draft, publicly notice, and issue regulations governing Public Records Act fee waivers and reductions under AS 40.25.110(d) and AS 40.25.115(b).

Legislation and Regulations

The Legislation and Regulations Section oversees agency regulations projects; provides final review of regulations; and assigns and tracks all legislative bills. One of the section's functions is to conduct training for agency regulations personnel on an annual basis. Last year, the section conducted four regulations classes for state agencies in Anchorage and Juneau. The section also provided internal training on both regulations and legislation for department attorneys.

Labor and State Affairs

The Labor and State Affairs Section handles a wide range of issues unique to the operation of state government. A few cases exemplifying the section's work are highlighted below.

Moon Rocks Case – *Anderson v. State*

- In 1969, in celebration of the Apollo XI moon mission, President Nixon presented small pieces of lunar material to Alaska's Governor.
- The lunar material was put on permanent display at the Alaska Transportation Museum in Anchorage. The museum burned in a fire set by an arsonist in 1973, and the lunar material was thought lost among the debris.
- Thirty-seven years later the lunar material reappeared when a plaintiff sued the State, claiming he had found the lunar material in the debris and that it was rightfully his.
- After the court granted a preliminary injunction in favor of the State, the plaintiff agreed to dismiss the case and return the lunar material to the State.
- The lunar material is now proudly back on display at the Alaska State Museum after a 39 year hiatus.

Parental Notification Law – *Planned Parenthood v. State*

- In October, the superior court issued a decision upholding the Alaska Parental Notification Law that was passed by voter initiative in 2010. The court held that with minor modifications the law satisfies the Alaska Constitution.
- At its core, the law requires that the parent of any minor seeking an abortion must be notified at least 48 hours before the abortion is performed, except in cases of

medical emergency, abuse, or when a minor obtains court permission to have an abortion without parental notice.

- Planned Parenthood will likely appeal the decision to the Alaska Supreme Court.

Susitna-Watana Hydroelectric Project

- The section has helped the Alaska Energy Authority (AEA) on all aspects of the Susitna-Watana Hydroelectric project.
- In December 2011, AEA began the formal licensing process, estimated to take six years, by filing a Pre-Application Document with the Federal Energy Regulatory Commission (FERC).
- Throughout 2012, the AEA participated in formal and informal meetings with FERC, other state and federal agencies, local entities and others to discuss environmental and socioeconomic studies that will be required for the project.
- In December 2012, AEA filed its revised study plan with FERC, remaining on target for filing the final license application with FERC in 2015.

Alleged Wrongful Termination of Director of the Governor's Office

- A decades-old wrongful termination case involving the Office of the Governor came closer to final resolution last year.
- In 1994, Margaret Ward was terminated as director of the

Governor's Anchorage office for the misuse of state resources. She filed a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) alleging that she had been terminated in retaliation for her support of a sexual harassment complaint made by her assistant Lydia Jones against an aide to Governor Hickel. The EEOC determined that her complaint should be processed under the Government Employee Rights Act (GERA) and subsequently lost the file. The case lay dormant for nearly ten years.

- After the case was resurrected in 2003, the State asserted sovereign immunity, but the Ninth Circuit sitting en banc determined the case could not be dismissed

on that theory given some of Ms. Ward's claims. The applicability of sovereign immunity to GERA cases has particular importance for state government because GERA intrudes on the Governor's ability to determine who should occupy vital advisory positions in the administration.

- Last year, the State prevailed after a hearing before an Administrative Law Judge, who determined that Ms. Ward had failed to establish a causal connection between a protected activity and her termination, and that even if there was such a connection, the State had established other legitimate reasons for her discharge.
- Ms. Ward has appealed the decision to the EEOC.



Natural Resources

Through litigation, administrative proceedings, and advice to executive branch agencies, the Natural Resources Section helps support the responsible development of the State's natural resources. The issues faced by the section last year included the proposed listing of the stellar sea lion under the Endangered Species Act; the calculation of the final judgment in *Carlson v. Commercial Fishing Entry Commission*; and the assertion by the State of its rights to certain roads and navigable waterways. One notable success before the Alaska Supreme Court, described below, reversed a lower court decision that would have required the Department of Natural Resources (DNR) to readopt all of its land use area plans as regulations.

Bristol Bay Area Land Use Plan – *Nondalton Tribal Council v. State*

- In 2009, five Bristol Bay area tribes and two other groups sued DNR challenging the 2005 Bristol Bay Area Plan. The superior court held that the area plan was actually a “regulation” as defined by the Administrative Procedure Act (APA).
- DNR has adopted numerous area plans in Alaska through a process that differs from the regulations process. Under the superior court's holding that area plans are regulations, DNR would have had to readopt all area plans using APA procedures.
- Instead of waiting for the superior court to decide the remaining issues in the case, the State sought immediate review of this holding in the Alaska Supreme Court.
- Fortunately, the Alaska Supreme Court agreed with the State that area plans are not regulations.
- On remand, the plaintiffs included new claims in their complaint. After the State moved to dismiss these new claims, the plaintiffs agreed to voluntarily dismiss the lawsuit in exchange for DNR's commitment to treat their complaint as a petition to reclassify land.



The Oil, Gas and Mining Section advises and represents the Department of Natural Resources (DNR) and the Department of Revenue. The section works to protect the State's interest in the development of oil and gas resources, which are vitally important to Alaska. Last year, the section's efforts to open the Point Thomson Unit oil and gas field paid off when the State and the operators executed a settlement agreement that requires development of the unit.

Point Thomson Unit

- For more than two decades, the lessees of the Point Thomson Unit, an oil and gas field east of Prudhoe Bay, declined to produce reservoirs containing more than seven trillion cubic feet of natural gas and hundreds of millions of barrels of oil.
- The State moved to terminate the unit due to the lack of production and litigated the issue up to the Alaska Supreme Court.
- While an Alaska Supreme Court decision was pending, the State and the lessees finalized a settlement in which the lessees committed to begin producing 10,000 barrels per day of condensate at the unit by the 2015-16 season. The lessees agreed to significantly expand production by the end of 2019 or lose acreage.
- Under the settlement agreement, ExxonMobil, the unit operator, must put two existing wells into production by the end of the 2015-16 winter season and drill at least one additional well by the end of the 2016-17 winter season. DNR has approved operations that allow ExxonMobil to drill up to 24 wells from three pads.
- ExxonMobil anticipates that the initial development of the unit will provide hundreds of jobs. It may also increase production into TAPS and provide an important impetus for large-scale commercialization of North Slope natural gas.



Opinions, Appeals and Ethics

The attorneys in the Opinions, Appeals and Ethics Section have several functions: to handle important or complex appeals; assist with the appellate work of other sections; handle Executive Branch Ethics Act matters; and provide advice and representation in Indian law matters. In addition, because the section's attorneys are skilled at legal research and writing, they are often asked to take on or assist with other important litigation. In this role, several of the section's attorneys assisted last year with an extremely expedited election lawsuit filed in the United States District Court.

Voting Rights Act – *Samuelson v. Treadwell*

- Four voters sued the State in federal district court under the federal Voting Rights Act, seeking to bar state officials from preparing for the 2012 elections until the United States Department of Justice approved (or “precleared”) Alaska’s interim redistricting plan. Had the plaintiffs succeeded in this lawsuit, Alaska likely would have had to postpone its August 2012 primary election, and possibly the general election as well.
- The case lasted twenty days from start to finish, but the team of attorneys accomplished a lot in that short time.
- The State filed briefs challenging the constitutionality of the preclearance requirement, which imposes special burdens on certain jurisdictions by mandating that they obtain approval from federal officials before they may change any law or procedure that might affect voting.
- This requirement, found in Section 5 of the Act, was designed to combat racial discrimination in voting that was prevalent in some states when the Act was passed in 1965. But Congress included Alaska under Section 5 without any evidence of voting discrimination in the State. Continuing Section 5’s extraordinary burden is not constitutionally justifiable. The State’s opposition to the preliminary injunction was a significant, complex brief that included the constitutional challenge and factual examples of the magnitude of Section 5’s burden on Alaska.
- The case became moot when the Department of Justice precleared Alaska’s interim redistricting plan, and was dismissed on the very day a three-judge panel was scheduled to hear oral argument.
- As described above in the “Standing Up for Alaska” section, the State subsequently filed a lawsuit affirmatively challenging the preclearance requirement and filed an amicus brief in a similar lawsuit currently before the U.S. Supreme Court.

“The Constitution does not authorize the federal government to dictate every detail of our elections.” – Attorney General Michael Geraghty

Regulatory Affairs and Public Advocacy (RAPA)

RAPA advocates for the general public interest in matters that come before the Regulatory Commission of Alaska (RCA), including the interests of consumers who would not otherwise have an effective voice regarding the rates and services provided by regulated utilities or pipeline carriers. Regulated public utilities are generally monopoly providers of essential public services (i.e., water, electric power, natural gas for space heat, etc.). Regulated pipelines are generally common carriers transporting oil or gas products to meet public utility fuel requirements or to bring hydrocarbons to market. Two cases RAPA addressed last year are highlighted below.

Kenai Nikiski Pipeline (KNPL) – Rate Case and Refund

- KNPL is a natural gas pipeline on the Kenai Peninsula used to transport gas to ENSTAR and to electric utilities. Utility consumers ultimately pay – through their monthly utility bills– the rate charged to move gas over this pipeline.
- RAPA participated before the RCA to investigate whether the rates KNPL charged to transport gas were reasonable.
- CINGSA, a new gas storage facility, began operation in 2012 to store gas for utilities' winter use when gas demand is high. Most of the gas going into (and out of) CINGSA is transported over KNPL.
- Because pipeline rates are directly impacted by the volume of gas transported, when a pipeline transports more gas, rates should generally decrease. RAPA and Cook Inlet utilities argued KNPL's rates should be significantly reduced as a result of increased gas transit over the pipeline due to CINGSA.
- A settlement was reached by which KNPL reduced its tariff rates from 20 cents to approximately six cents per 1000 feet of natural gas. These cost savings will be passed through to utility consumers in their utility rates,

and to other industrial consumers who use KNPL to transport their gas to market or for internal consumption.

Infrastructure Improvement Surcharge – Regulatory Rulemaking

- Utilities came before the RCA requesting establishment of an infrastructure improvement surcharge.
- Utilities claim a surcharge is necessary as a quick recovery vehicle for utility investments made in new or replacement infrastructure. The utilities also argue that a surcharge will allow consumers to ultimately save money because utilities will be able to avoid the cost of frequent rate cases.
- RAPA filings made in this rulemaking docket oppose the proposed surcharge because: (1) surcharge use can result in unnecessary infrastructure investment, resulting in higher than necessary consumer rates, (2) surcharge use can reduce built-in regulatory incentives for utilities to control costs between rate cases, and (3) the utilities' claims that surcharge use will reduce the number of rate case filings are unsubstantiated.
- RCA has not yet issued a decision.

Torts and Worker's Compensation

The Torts and Worker's Compensation Section defends the State, state agencies and state employees against tort claims before the courts and represents the State as an employer before the Alaska Worker's Compensation Board. The tort claims handled by the section range from personal injury, to property damage, to civil rights. The section's cases can have far-reaching consequences, as illustrated by the Alaska Supreme Court's decision last year in *State, DOC v. Heisey*.

Challenges to AS 09.50.253 – Certification of State Employees

- AS 09.50.253 provides for substitution of the State as a party in place of individual state employee defendants in certain litigation.
- Under this statute, if a state employee is sued and the Attorney General certifies that the employee was acting within the scope of employment, the employee is dismissed from the case and the State is substituted as the defendant for all state law claims. The State's defenses then apply to those claims.
- In March 2012, the Alaska Supreme Court issued its long-awaited opinion on legal challenges to Attorney General certification decisions in *State, DOC v. Heisey*. As anticipated, the court held that these decisions are judicially reviewable.
- The court also held that the Attorney General's certification is presumed to be valid, and placed the burden on the plaintiff to prove that the employee's conduct was not in the scope of employment. The State prevailed on other collateral issues and the case returned to the trial court for further litigation.
- The *Heisey* standard has been applied in several legal challenges to Attorney General certification last year. To date, the State has prevailed in every case, with the courts upholding the State's substitution in place of the state employee involved.



The Transportation Section assists the Department of Transportation and Public Facilities and other state agencies with transportation and infrastructure projects and operations. Section attorneys advise the agencies on everything from construction issues, real property and right-of-way acquisition and disputes, funding issues, airport and Marine Highway System operations, legislation and regulations, environmental permitting and compliance issues, and even media contracts for television shows like “Ice Road Truckers.” Most of the section’s efforts are spent helping its client agencies operate effectively within existing legal frameworks. However, big projects inevitably spawn big disputes, and to protect the State’s interests, section attorneys regularly engage in both the administrative dispute resolution process and litigation—such as the fast ferry case described below.

Fast Ferry Litigation

- Shortly after the fast ferries Chenega and Fairweather were delivered to the State, the engines in both vessels began rapidly degrading. Despite numerous attempts at repair, it appears the engine life will be substantially less than what the State was originally promised.
- The State sued both the shipyard that built the vessels and the engine manufacturer, alleging, in part, breach of contract, breach of warranty, misrepresentation, and unfair trade practices.
- The State is seeking either replacement engines or recovery of the cost of replacement, estimated to be in excess of \$30 million.
- The case was delayed after the shipyard filed for bankruptcy protection last spring, but trial against the engine manufacturer is scheduled for April 2013.





Criminal Division

The Criminal Division works to establish safe and healthy communities by prosecuting and convicting criminal offenders in urban and rural Alaska and by upholding those convictions on appeal. The Division assists victims and witnesses of crimes, and supports the efforts of criminal justice agencies to detect and punish crime through investigation, trial, and conviction. It also provides general legal services to the Departments of Corrections and Public Safety relating to their criminal justice functions. The division maintains district attorney's offices in 13 communities throughout the State.



Richard Svobodny is the Deputy Attorney General overseeing the Criminal Division.

First Judicial District

Drug cases are on the rise in the First Judicial District. The three District Attorney's offices in Southeast Alaska, located in Juneau, Sitka and Ketchikan, continue to prosecute many methamphetamine cases, while heroin and cocaine cases are becoming more frequent. In 2012, the mixture of cases going to trial resembled that of past years, with domestic violence cases still the most common. The overall trend in Southeast Alaska, however, seems to be toward more drug-related cases, including burglaries and thefts committed to support drug habits.

In addition to drug-related cases, a notable murder trial took place in 2012. The 2010 murder of two Hoonah police officers by John Marvin went to trial in October. Marvin was found guilty of two counts of first-degree murder—including, for one of the two counts, murder of a peace officer engaged in the performance of official duties.

Although both victims were police officers, the jury was only able to find beyond a reasonable doubt that one of the two officers had been uniformed or otherwise clearly identified as a peace officer. The jury inquired of the trial judge whether it was sufficient to "know" a person was a peace officer. The judge ruled that it was not.

Second Judicial District

The District Attorney's offices in the Second Judicial District, located in Barrow, Kotzebue and Nome, observed a troubling increase in assaults with firearms last year. Both Barrow and Kotzebue have had recent firearm-related standoffs with police. Barrow saw seven firearm-related assaults this past year, a marked increase from prior years.

In 2012, Nome also experienced a major influx of gold miners over the summer, many of whom came ill equipped to mine and with significant out-of-state criminal records. When they did not succeed in finding gold, an increase in assaults, thefts and DUIs resulted. As winter approached, the trend subsided, at least temporarily.

A recent case demonstrates that the national epidemic of copper theft has reached the 71st parallel. The Barrow

office is prosecuting two oil company employees for attempting to steal \$150,000 worth of copper scraps from the Kuparuk oilfield outside of Prudhoe Bay. According to the allegations, the two men attempted to send 18,700 pounds of scrap to a personal residence in Anchorage. The material made it as far as the haul road but was flagged as suspicious by a Lynden Transport dispatcher. Doyon Security initiated an investigation and referred the case to the North Slope Borough Police.

Third Judicial District – Anchorage

The Anchorage District Attorney's Office is the largest prosecutor's office in the State. The office tried 132 cases in 2012, up approximately 50% from five years ago. The office experienced an increase in sexual assault and sexual abuse of a minor cases going to trial—likely due to legislative changes in how these cases are sentenced. In Anchorage, the courts hold trials for only half-days and only four days a week. Because of this schedule, trials take longer to complete than in other locations in the State. Sexual abuse of a minor and sexual assault trials, consequently, take three to four weeks on average to complete—an unfortunate amount of time for the victims of these offenses. Approximately the same level of resources are going into these cases as the average homicide case.

Anchorage has also seen an increase in the level of violent offenses committed by offenders who are high on synthetic drugs such as "spice" and "bath salts." "Spice" is a street name for synthetic marijuana. Unfortunately, the law has been unable to keep up with spice because Alaska's statutes reference very specific chemical compounds, and spice manufacturers are able to chemically alter their product so that it does not contain any banned compounds but still produces a similar high. As a result, when a substance is seized and reported to be spice, chemical analysis often reveals that it is not a controlled substance under Alaska law. "Bath salts" is the term for synthetic drugs used as substitutes for methamphetamine and cocaine. Specific testing for these drugs is currently being performed by the new State Crime Laboratory. The law enforcement community and the Anchorage District Attorney's Office have responded to these synthetic drugs

by vigorously prosecuting distributors and aggressively seeking to confiscate the proceeds of drug sales and property items used in drug crimes.

A recent case highlights the problems caused by synthetic drugs: Byron Syvinski, high on bath salts, attacked and beat a seven-year-old girl who was riding her bicycle. She suffered a serious head injury requiring hospitalization. At trial for first degree assault and robbery, the defendant argued that he had been in a drug-induced psychosis and had not known what he was doing. Medical testimony revealed that the hospital cannot currently test for synthetic drugs, and had diagnosed the defendant as high on bath salts by process of elimination. The jury convicted on all counts. The court imposed a composite sentence of more than 20 years—19.5 years for this crime plus additional time imposed because the defendant had violated his probation in an earlier case.

Third Judicial District – Outside Anchorage

The Palmer, Kenai, Dillingham, and Kodiak District Attorney's Offices, located in the Third Judicial District outside of Anchorage, conducted 50 felony and 55 misdemeanor jury trials by November 1, 2012. These offices observed several trends over the last year. All noticed a substantial increase in the number of heroin prosecutions. In Kenai and Palmer, the increase in heroin cases has coincided with decreases in methamphetamine and pill cases. However, Kodiak has seen an increase in both heroin and methamphetamine cases, as the street value of both drugs has increased significantly on the island. The increase in drug cases has been accompanied by a rise in domestic violence and property offenses related to narcotics.

The district also experienced an increase in the severity of violent crime. The Kodiak office, in particular, noted more strangulation injuries, especially in domestic violence cases. The offices have also seen more cases in which violence, including deadly violence, has been targeted at law enforcement. In most of these cases, the defendants have been under the influence of alcohol, drugs, or a combination of substances.

Prosecuting cases involving domestic violence remains a priority in the district. Particular cases, such as *State v.*

Andrew Thomas, are sad but important reminders as to why this is such an important mission. Thomas killed his ex-girlfriend in Palmer by stabbing her and beating her with a sledgehammer. At his February 2012 trial, the defense argued heat of passion and lack of intent, due to intoxication, in an attempt to get the jury to convict on a lesser charge. After a nine-day trial, the jury convicted Thomas of murder in the first degree and murder in the second degree. He had 14 prior criminal convictions, including seven convictions for assault. He is currently serving a 99-year sentence.

Fourth Judicial District

The Fourth Judicial District covers the largest area of any of the four districts. It stretches from Kuskokwim Bay and Norton Sound east to the Canadian border and from Fairbanks north to the Brooks Range. The two regional District Attorney's Offices covering this area are in Bethel and Fairbanks. Each office serves many villages, most accessible only by air.

Although driving while under the influence (DUI) has been a major problem in this district for decades, the district is seeing an alarming trend toward higher and higher levels of intoxication. Breath tests showing blood alcohol content above .20% used to be

the exception, but they are becoming commonplace. Drivers frequently are also under the influence of other substances in addition to alcohol. These cases often end with tragic results; the Fairbanks office prosecuted several vehicular homicides last year in which

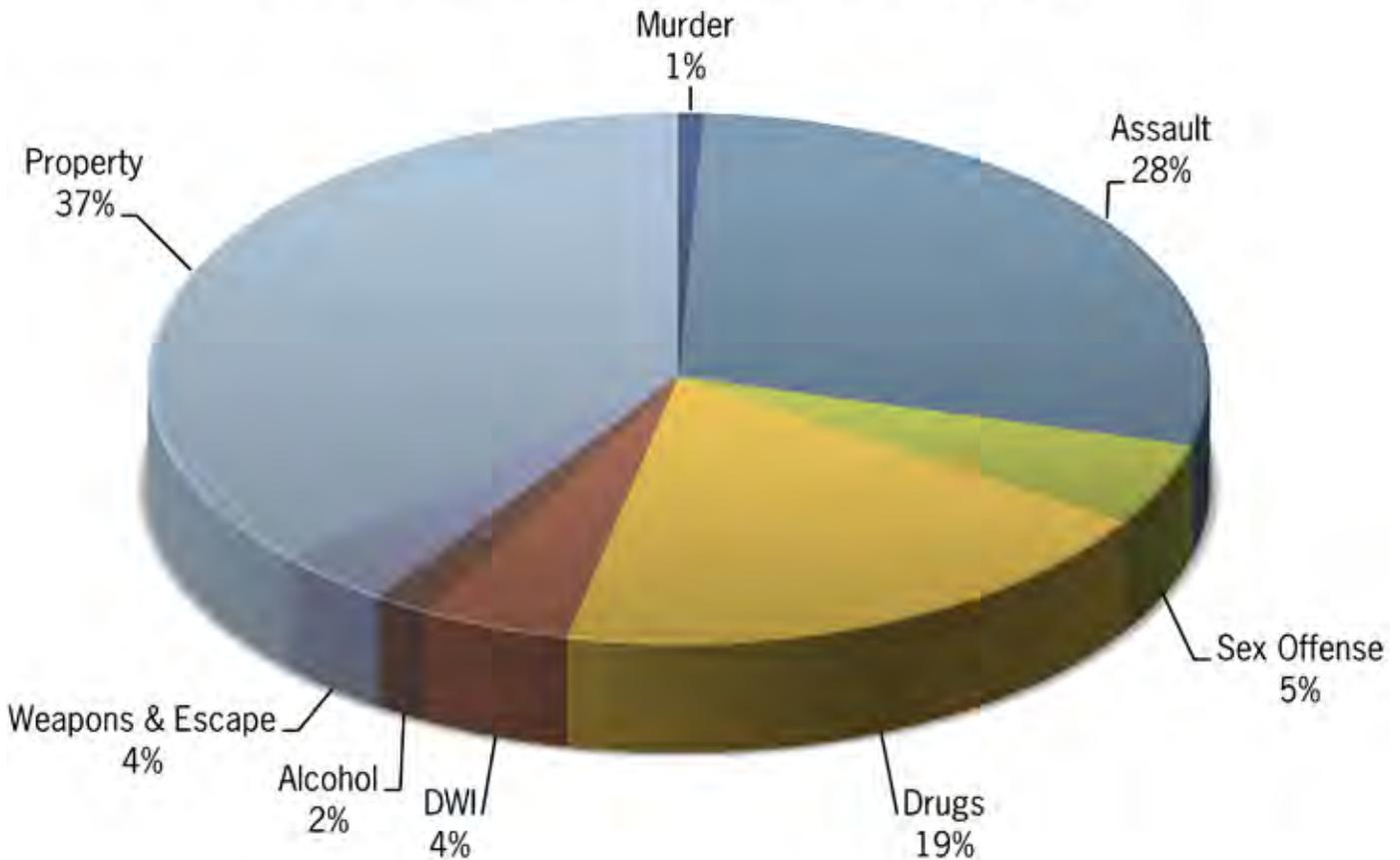
drivers had alcohol levels exceeding .20% and cocaine or marijuana in their blood streams.

In the Yukon-Kuskokwim Delta, which contains Bethel and 56 surrounding Native villages, crimes related to substance abuse comprise over 95% of prosecutions. However, unlike Fairbanks, the lack of a road system means the substance abuse is more often linked with crimes against people, rather than DUIs. Alcohol has many negative effects on the Delta beyond those reached by the criminal justice system—ranging from truancy of children whose parents are habitually intoxicated, to unavailability of items in stores such as

hand sanitizer, mouthwash, and white wine vinegar that are often stolen and consumed for their alcohol content.

In addition to alcohol issues, the Delta has also seen a recent increase in drug-related prosecutions; marijuana and heroin have become more popular. Last year the Bethel office dealt with four murder cases, all of which involved substance abuse. In one case, the defendant was convicted of second-degree murder for beating his girlfriend to death. Over the course of several days of heavy drinking, the defendant beat the victim so severely that she died of blood poisoning from a perforated bowel.

2012 Criminal Division Felony Cases



Office of Special Prosecutions and Appeals

Special Prosecutions

The Special Prosecutions Unit handles highly specialized crimes, such as cyber crimes, alcohol interdiction, environmental crimes, fish and game offenses, criminal non-payment of child support, cold cases, and various types of fraud involving Medicaid, public assistance, Permanent Fund Dividends, taxes, and workers' compensation. The unit is also responsible for reviewing all deaths resulting from police officer-involved activities, and takes on cases that pose a conflict for district attorney's offices throughout the State. In the past year, the Special Prosecutions Unit consolidated with the Rural Prosecutions Unit. The unit became increasingly forward-looking, collaborative and creative in its prosecutions and added dynamic new prosecutors to the team.

The prosecution of Randy Hahn serves as an example of the increased collaboration and aggressive prosecution taken on by the unit. In 2004, the State began collecting vehicle rental taxes. Mr. Hahn owned and operated Anchorage-based Kiska Corporation and its subsidiary, High Country Car and Truck Rentals. In 2004, the Department of Revenue notified High Country that it was required to file tax returns and to pay the tax due

on revenue generated from vehicle rentals. Five years later, High Country still had not paid any taxes. A three-year investigation revealed that High Country owed the State almost \$400,000 in unpaid taxes and another \$300,000 in penalties and interest since 2004. In September 2012, Hahn was convicted and sentenced to spend six months in jail and to pay \$71,000 a year for nine years to the State.



The Appellate Unit represents the State in criminal appellate proceedings and state and federal post-conviction and habeas corpus proceedings; it also handles civil litigation challenging statutes related to criminal justice. The unit observed two trends this past year. First, the unit has seen a marked increase in appeals involving the superior court's three-judge sentencing panel—a legislatively created panel of judges who can deviate from a presumptive sentence if imposing the presumptive sentence would be manifestly unjust. This appears to be in part due to the increased presumptive sentencing ranges for sexual assault and sexual abuse crimes, and in part due to more requests by defendants to be referred to the three-judge panel, regardless of the nature of their underlying crimes. The second observed trend is an increase in appeals raising constitutional issues regarding the Confrontation Clause (i.e., a criminal defendant's right to confront and cross-examine witnesses testifying for the prosecution). This trend is undoubtedly due to a series of recent U.S. Supreme Court cases exploring the parameters of the Confrontation Clause.

One of the most significant appellate decisions for the unit last year was the Alaska Supreme Court's reversal of the Court of Appeals in *State v. Gibson*. The Court held that the police may enter a home without a warrant when they determine that serious domestic violence has occurred and it is unclear whether all people who may have been affected (including children) are accounted for. The facts of the case exemplify the often dynamic circumstances the police confront when responding to reports of domestic violence. The police were dispatched to a trailer home on the basis of a woman's 9 1 1 call reporting that her boyfriend was threatening to stab her in the head. During the call, the dispatcher could hear a disturbance in the background. When the police

arrived, a woman came running out of the trailer; she was hysterical, bleeding from her head, and wearing only a tank top. The police took a man into custody and secured the woman in a patrol car. When asked, the woman told the police that no other people were in the trailer. Given the circumstances, the police did not believe the woman and entered the trailer to check for other victims where they discovered a methamphetamine laboratory. The Court of Appeals held that the police should not have entered the home without a warrant, but Assistant Attorney General William Hawley—who has served the State for over four decades—convinced the Alaska Supreme Court to reverse, holding that the entry was permissible under the circumstances.



Administrative Services Division

The Division of Administrative Services provides administrative support to the Civil and Criminal Divisions to free up the efforts of both divisions to carry out the mission of the Department. Its functions include procurement, information technology, budgetary actions, restitution collections and disbursements, timekeeping, and human resources.



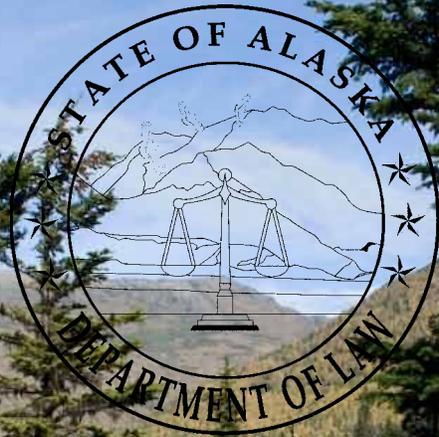
*Dave Blaisdell is the Director of the
Administrative Services Division.*

Accomplishments/Highlights

- The Division helped the Department with awards and collections that exceeded \$300 million.
- The Division administered over 125 professional services contracts, managed a nearly \$100 million budget and oversaw the information technology for the Department. The information technology continued to grow with:
 - the expanded deployment of the case management system,
 - the development of a receipting program,
 - the deployment of an evidence tracking tool allowing the electronic transfer of evidence to defense attorneys, and
 - the deployment of an electronic discovery application to be used in both gathering discovery and responding to public records.
- The Division supplied many prosecutors with iPads to assist them in providing more effective representation of the State.
- The Division completed renovation of the Anchorage office data center, which ensures the protection of all hardware because there are now proper environmental controls.
- Efforts are underway to deploy CITRIX, a remote connectivity service. Initial deployments to the Civil Division rural offices have enabled those offices to use the case management system, instead of sending information to Anchorage to be entered. The Department is now incorporating CITRIX into the Criminal Division's operations. This will enable the Criminal Division to upgrade their existing desktop software from Office 2003 to Office 2010, the current State of Alaska standard.
- The Division added an employee to carry out the human resource functions that were formerly centralized within the Division of Personnel.

Goals and Future Projects

- In addition to the new receipting program described above, the Division hopes to incorporate data sharing between the Department and the Court System to further increase efficiencies.
- The Department is starting a project to replace the Criminal Division's obsolete case management system with a system that is up to current business standards.
- The Division's procurement and finance offices continue to work with the Department of Administration on statewide system replacements that will change the business processes related to procurement and financial management.



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