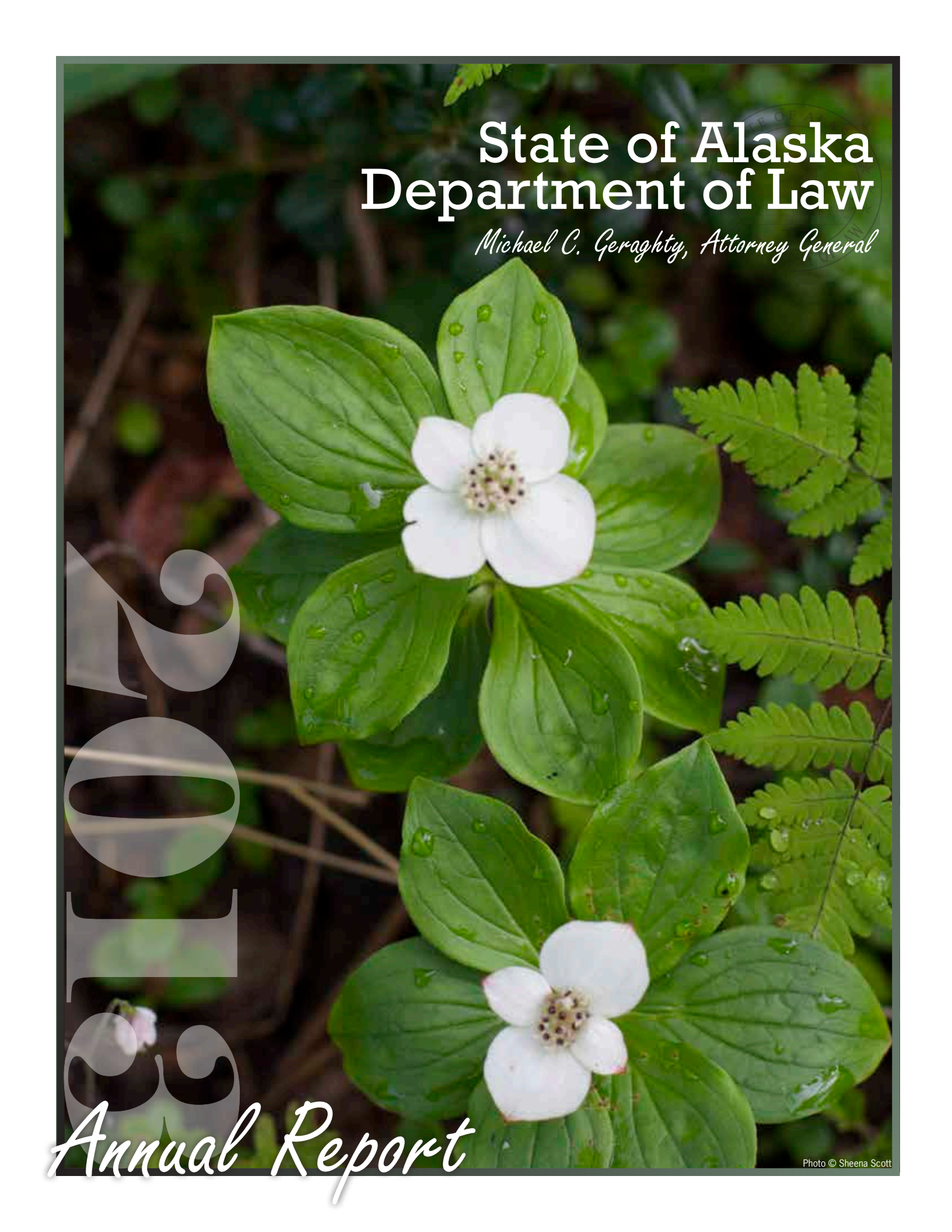




State of Alaska Department of Law

Michael C. Geraghty, Attorney General

*2013
Annual Report*

Table of Contents

Message From the Attorney General.....	1
Department of Law Organizational Chart.....	3
Criminal Division	4
Spotlight: Medicaid Fraud Abuse Control Unit	5
First Judicial District.....	6
Second Judicial District	7
Third Judicial District – Anchorage.....	8
Third Judicial District – Outside Anchorage.....	8
Fourth Judicial District.....	9
Office of Special Prosecutions and Appeals.....	10
Civil Division.....	12
Child Protection	13
Collections and Support	14
Commercial and Fair Business	15
Environmental.....	17
Human Services	18
Information and Project Support.....	19
Labor and State Affairs	20
Legislation and Regulations	22
Natural Resources	22
Oil, Gas and Mining	24
Opinions, Appeals and Ethics	25
Regulatory Affairs and Public Advocacy (RAPA).....	26
Torts and Workers' Compensation.....	27
Transportation	29
Administrative Services Division.....	30
Highlights.....	31

Message From the Attorney General

Dear Governor Parnell and legislators:

I look back on 2013 with satisfaction. The challenges to the staff at the Department of Law never cease – and I am proud of the effort and commitment we put forth in fulfilling our mission: to protect Alaskans, promote economic opportunities for the responsible development of our abundant resources, protect the state's fiscal integrity, and promote good governance.

I am pleased to report that in the last year:

- I instituted a change in the plea negotiation process to restore sentencing where it belongs, with judges. While our Criminal Division will continue to arrive at appropriate plea dispositions based on the law and the facts, we will no longer agree to sentences with the defendant for sexual crimes and violent felonies. Instead, our prosecutors will argue for the stiffest sentence supported by the law and the facts, and allow the court to impose what it believes to be an appropriate sentence. I took this step because it is critical for the public to have confidence in the criminal justice system and it is judges, not prosecutors, who should be determining the appropriate sentence in those serious cases that affect our communities.
- For too long the state has been required to submit any and all voting changes here in Alaska, no matter how minor, to the Department of Justice in Washington, D.C. for clearance under the Voting Rights Act. Alaska was one of a small number of jurisdictions singled out for this treatment based upon an archaic formula and outmoded data. In August of this year the state filed suit to strike down the portion of the Act requiring Department of Justice clearance and also filed an amicus brief seeking the same result in another case, *Shelby County v. Holder*. The U.S. Supreme Court agreed and struck down the clearance requirement. The court's decision does not detract in any way from the state's commitment to ensure that every voter in Alaska can freely and effectively exercise his or her right to vote. However, the decision eliminates a costly hurdle that created uncertainty and delay in Alaska's elections process. I was particularly proud that the National Association of Attorneys General recognized the quality of our lawyers' amicus brief by honoring them with a Best Brief award.



- In April 2013 we filed a lawsuit against the federal government and others to quiet title to a number of rights-of-way near Chicken, Alaska. Alaska acquired these rights-of-way under Revised Statute 2477, but the federal government fails to recognize that grant and has interfered with Alaskans' right of access. As a state, it is important that we assert our interest in these vital access routes though much work remains to be done.
- Given the vast expanse of our state, I believe there is significant potential to enhance public safety by working with tribes. Under the Governor's leadership, the department drafted an agreement to delegate to tribal courts authority to impose civil remedies for certain offenses and misdemeanors, including domestic violence and alcohol-related offenses. The defendant would be given the option of having the local tribal court handle the offense, or face potential state prosecution. I am hopeful that a partnership between the state and our rural tribal communities will help combat crime and improve public safety.
- On a related note, with the assistance of our tribal and child protection attorneys, the Department of Health and Social Services recently signed a historic agreement with the Tanana Chiefs Conference that will allow TCC and its associated thirty-seven tribes access to federal Title IV-E funds to help pay for some of the costs associated with housing children in tribal-licensed foster homes. It means an additional \$300,000 to \$400,000 annually in federal reimbursements within the next three to five years. The significance of this agreement is critical when you consider that 60 percent of all children in foster care in Alaska are Alaska Natives. Besides being a historic agreement with the tribes, it is hoped that these funds will eventually create more culturally appropriate foster homes for Alaska Native children, and reduce the number of Native children in state foster care.

In summary, we look back on the year just ended with a sense of accomplishment – but we cannot rest on our laurels because the challenges never cease. We must – and will – continue to advance and protect the interests of the citizens of this great state where we are blessed to live.

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

Kenneth M. Rosenstein,
Solicitor General of Criminal Affairs

Special Prosecution

Robert Henderson,
Chief Assistant Attorney General

1st Judicial District

James T. Scott,
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



Criminal Division staff.

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.

SPOTLIGHT: MEDICAID FRAUD ABUSE CONTROL UNIT

The Alaska Medicaid Fraud Control Unit (MFCU) became part of the Alaska Attorney General's Office in January 1992. The unit is located in Anchorage and has statewide jurisdiction to prosecute Medicaid fraud, including patient neglect and financial exploitation in any facility that accepts Medicaid funds. The unit originally consisted of one prosecutor, three investigators, a forensic accountant/auditor and one staff member. In 2012, the Alaska Legislature approved the addition of three Medicaid fraud investigator positions. The unit, which was fully staffed by October 2012, utilized the increased resources to dramatically increase the number of overall prosecutions of Medicaid fraud in Alaska.

In October 2012, the MFCU, under the guidance of a new director, began aggressively focusing on elder abuse and fraud within the home healthcare personal care attendant (PCA) industry. The focus on the PCA industry was a cooperative effort between the Alaska Department of Health and Social Services (DHSS), Program Integrity and Quality Assurance units and the MFCU. The focus on fraud within the PCA industry resulted in the filing of criminal charges in 62 individual cases (up from one case the prior year) and identifying over \$800,000 in fraudulent billing. This included the simultaneous filing of 29 cases, of which 28 of the defendants were associated with a single home healthcare agency located in Anchorage. The prosecutions resulted in 25 criminal convictions to date with over \$100,000 in restitution judgments as of November 2013.



Additionally, the unit charged five cases involving elder abuse (two of which were also PCA cases), which constitute more prosecutions of abuse than the unit filed in the last 10 years combined. The unit successfully resolved three of the elder abuse cases through criminal plea agreements and one through a civil resolution.

All of the criminal convictions barred the defendants from providing any Medicaid services nationwide absent a variance from DHSS. Other criminal investigations resulted in the barring of a medical practice, a transportation agency and an individual physician from receiving payment from Medicaid due to credible allegations of fraud.

The Alaska MFCU achieved these results because of the increased staffing of investigators and by working closely with DHSS, the Social Security Administration, the Anchorage Police Department, and the Alaska State Troopers.

Andrew Peterson accepts the 2013 Team Award for the Medicaid Fraud Control Unit from Attorney General Michael Geraghty and Deputy Attorney General Richard Svobodny.

First Judicial District

Two District Attorneys oversee the Juneau, Ketchikan and Sitka District Attorneys' Offices. Covering numerous isolated communities in Southeast Alaska, prosecutors and paralegals spend a lot of time conversing with local law enforcement and traveling to different towns to work on making all Southeast communities safer. The following are trends and highlights of the past year.

- As the abuse of the prescription drug Oxycontin waned, due to manufacturer changes that made the drug more difficult to smoke, the First Judicial District saw an increasing number of prosecutions related to the importation of inexpensive Mexican black-tar heroin.
- The Juneau District Attorney's Office was among the first in the state to prosecute cases under

the new statutes that require retail distributors of methamphetamine precursor materials to keep records of those sales. Utilizing these records, individuals suspected of manufacturing methamphetamine were located and successfully prosecuted. Even with this new tool to assist in criminal investigations, the number of methamphetamine cases prosecuted in 2013 in the First Judicial District did not differ greatly from the number prosecuted in 2012.

- The Juneau District Attorney's Office implemented an e-discovery project, which allows for the electronic transmittal of police reports, videos, audio recordings and other digital media from the police to the district attorney's office where it is then electronically forwarded to the defense attorneys.



Second Judicial District

Criminal Division staff work tirelessly in the Nome, Kotzebue and Barrow offices. Their cases range from sexual abuse of a minor, to drug possession, to burglaries. A few significant cases are described below.

- Sexual assault and sexual abuse of a minor cases continue to receive significant and priority attention. In Kotzebue, Assistant District Attorney Johnny Hayes prosecuted Jerry Coffin for sexually assaulting an unconscious victim. A jury agreed with

the prosecution and convicted the defendant.

- In Nome, a jury convicted Charles Saccheus of sexually abusing a young relative. The case was handled by Assistant District Attorney Tom Jamgochian.
- The number of cases related to heroin—possession, burglary, and even embezzlement—has increased. Prosecution of these cases is now a priority for the district attorneys in this region.



Deputy Attorney General Jim Cantor holding Nome District Attorney John Earthman's falcon.

Third Judicial District – Anchorage

The Anchorage District Attorney's Office handles issues unique to Alaska as well as issues that commonly arise in large metropolitan areas. The following are some significant issues addressed in Anchorage.

- Continuing to focus on sexual assault and domestic violence, prosecutors brought to trial more than 25 sexual assault and numerous domestic violence cases.
- The Anchorage office has prosecuted a number of homicide cases and has more than 33 homicide cases scheduled for trial in the next six months. District Attorney Sharon Marshall prosecuted Kenneth Wahl for the intentional murder of his neighbor Elisa Orcutt. At the time of the murder, Wahl was on parole

for another murder he committed in 1983. Although Wahl denied the murder, fingerprints, boot prints, and DNA linked him to the crime. The jury convicted Wahl of first degree murder. As a result of his prior murder conviction, Wahl faces a mandatory sentence of 99 years in prison.

- Anchorage saw an increase in the number of fatalities resulting from driving under the influence (DUI). Five Anchorage residents died in four separate crashes in 2013, including two 15-year-old girls struck while walking on a South Anchorage sidewalk. The driver who killed the girls has been charged with two counts of murder in the second degree, and the trial is scheduled for May 2014.

Third Judicial District – Outside Anchorage

In addition to Anchorage, the Third Judicial District includes the Kenai, Kodiak, Dillingham and Palmer District Attorney's Offices. These offices have brought an increased number of domestic violence and sexual assault cases to trial. The following examples illustrate trends and cases encountered over the past year.

- The offices continue to focus significant attention and resources on the State's campaign to end domestic violence and sexual abuse, particularly

in cases involving physical or sexual violence towards children. One notable case involving four separate victims in Valdez demonstrates the importance of focusing on these issues. A jury convicted Derek Werder of 16 counts of sexual abuse of a minor in the first degree, nine counts of sexual assault in the first degree, three counts of sexual abuse of a minor in the second degree, four counts of assault in the third degree and one count of assault in the fourth degree. Werder received

a composite sentence of 219 years to serve, with 69 years suspended.

- The Palmer, Kenai, and Kodiak District Attorney's offices conducted 48 felony and 55 misdemeanor jury trials during the year, with the number of trials increasing in recent months.

- All three offices continued to witness an increase in the number of cases involving methamphetamine and heroin. The offices have also witnessed an increase in domestic violence, theft and burglary cases, all of which are often associated with drug use by the offenders.

Fourth Judicial District

The Fourth Judicial District contains the Bethel and Fairbanks District Attorney's Offices. A case of significance this year that illustrates challenges facing law enforcement in rural Alaska arose in the village of Chefnak, on the south bank of the Kinia River, 16 miles upriver from the Bering Sea.

- Chefnak had only one untrained, newly hired village officer. Abandoning his duties, this officer went from building to building firing guns at people.
- The entire village of 418 people in 75 households was put on lockdown,

with about a quarter of its residents barricaded in the post office, city hall, local store, and the tribal council building, while state troopers flew in from Bethel as quickly as possible.

- Once the state troopers arrived, an eight-hour standoff ensued. Troopers eventually negotiated a peaceful surrender.
- The village officer was sentenced to 29 years with seven years suspended for one count of weapons misconduct and nine counts of third-degree assault.



*Kenai held a Choose Respect march
March 28, 2013*

Office of Special Prosecutions and Appeals

Special Prosecutions Unit:

The Special Prosecutions Unit handles highly specialized crimes, such as alcohol interdiction, cyber crimes, cold cases, worker's compensation offenses, environmental law violations, fish and game offenses, white-collar crimes, public-integrity offenses, and cases that pose a conflict for local district attorney's offices throughout the state. The Unit also prosecutes individuals who defraud the State of Alaska and others through the criminal non-payment of child support and criminal conduct involving Medicaid, public assistance, permanent fund dividends, and taxes. Some successes from this past year are discussed below.

- In the area of public assistance welfare fraud, the unit obtained approximately \$198,400.00 in court-ordered restitution.
- One case of note was the prosecution of a 38-year-old Anchorage woman convicted of second-degree theft and falsifying business records based on her fraudulent receipt of public assistance benefits. To qualify for benefits, the woman falsified her application for public assistance, claiming that her minor child resided with her when in fact the child lived elsewhere. The woman also falsified Beacon-Worksafe business records to make it appear as though her urinalysis reports were negative for controlled substances when in fact her test results were positive. The woman received a sentence of three years of

incarceration and was ordered to pay \$14,507.33 in restitution to the State of Alaska. Cases like this require a team approach between the Division of Public Assistance and the Special Prosecutions Unit.

Appeals Unit:

The Appeals 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. In 2013, the unit faced challenges relating to increased delays in the processing of appeals but also experienced a number of favorable appellate rulings.

Increased Delay in Processing Appeals

- Over the past year the Appeals Unit observed a continuing trend of increased delay in the overall processing of appeals. This delay is system-wide encompassing the Public Defenders' Office, the Office of Public Advocacy, the Court of Appeals, and the Appeals Unit.
- A primary factor contributing to the delay is the continuing rise in the overall number of cases and issues appealed.
- A major factor contributing to the increased caseload is the rising number of defendants requesting referral to the three-judge panel—a legislatively created panel of judges

who can deviate from a presumptive sentence if imposing the presumptive sentence would be manifestly unjust. Three-judge panel requests increased after courts recognized new non-statutory mitigating factors, including factors applicable to sexual crimes. Despite recent statutory amendments designed to prohibit consideration of some of these factors when determining whether the use of a three-judge panel would be appropriate, the unit is still actively litigating cases on this issue.

- Additionally, the Court of Appeals recently decided that the three-judge panel may impose a sentence below the presumptive range to shield noncitizen defendants from the federal immigration consequences of their offenses. The unit is challenging this decision in a petition for hearing to the Alaska Supreme Court.
- The unit experienced a significant increase in litigation over the admissibility of defense-administered polygraph results, an issue subject to ongoing litigation.

Favorable Appellate Rulings

- During the past year, the unit successfully defended Alaska's online-enticement statute against a defendant asserting that the statute is unconstitutionally overbroad and so violates the First Amendment

right to free speech. The statute—AS 11.41.452—prohibits an adult from using a computer to entice, solicit, or encourage a child under 16 years of age to engage in statutorily prohibited sexual acts. The defendant was convicted of online enticement of what he believed to be two 14-year-old girls. The putative 14-year-olds were fabricated profiles created by a member of the Anchorage Police Department to detect online criminal activity. Over several months, the defendant engaged the “girls” in increasingly sexualized communications, and eventually persuaded the “girls” to engage in sex acts for him and to watch him engage in sex acts while online.

- The defendant argued that the phrase “entice, solicit, or encourage” could be interpreted to reach beyond acts of sexual exploitation and would chill otherwise protected speech and conduct. Attorneys within the Appeals Unit convinced the court that a narrow construction, which requires the prosecutor to prove that the defendant intended to cause or persuade the child to engage in the prohibited sexual activities, avoids unconstitutional over breadth or vagueness. The court held that, when narrowly construed, the statute primarily restricts only unprotected speech and its permissible reach “dwarfs its arguably impermissible applications.”



Civil Division summer interns with AAG Laura Fox, Justice Fabe, and AAG Dario Borghesan

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.

Child Protection

Protecting Alaska's children is one of the Department's most important tasks. 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 2,000 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 actively participated in the Children's Justice Act Task Force, the

Court Improvement Project, the CINA Rules Committee, a statewide Indian Child Welfare Act (ICWA) Committee, and several other groups and committees dedicated to improving the child protection system.

- 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 Office of Public Advocacy (OPA) and Public Defender, and the Court System. The program directly engages and assists parents of children who have been the subject of CINA petitions.



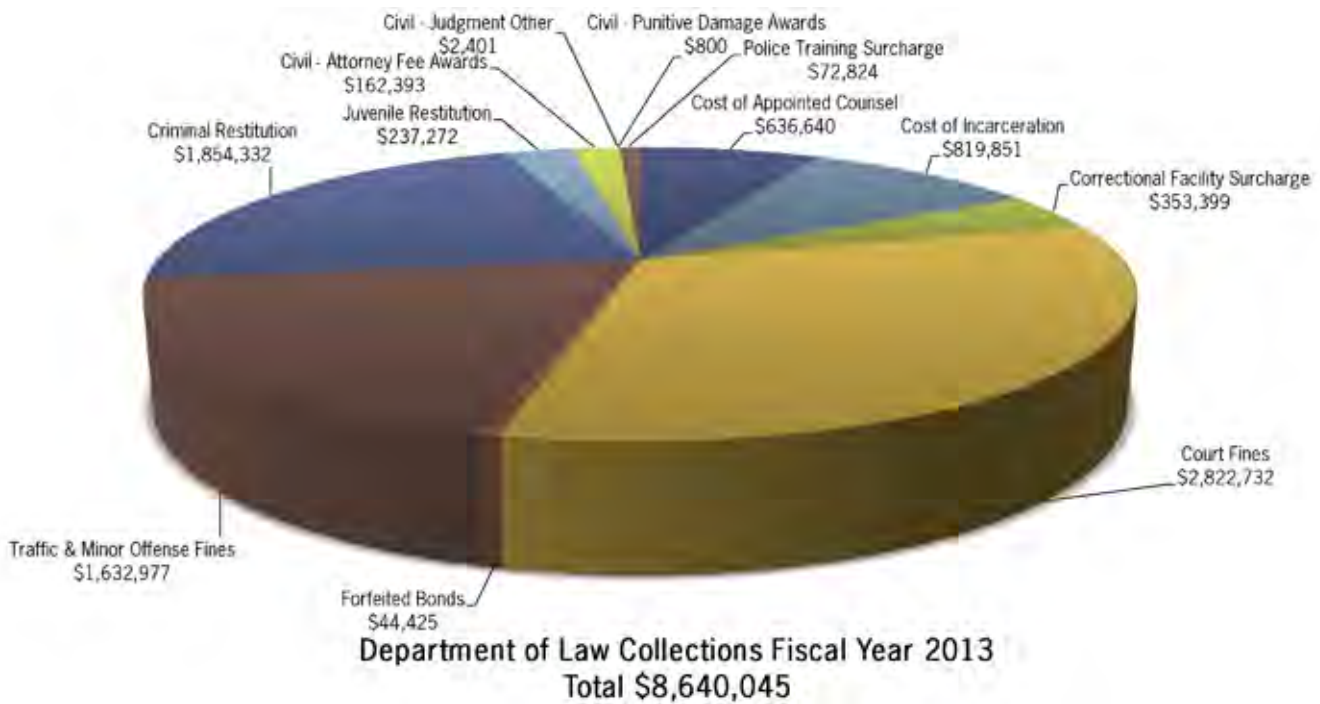
Collections and Support

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.

The Collections Unit collects debts owed to the State of Alaska and to victims of crimes. In FY 2013, the unit collected more than \$8.6 million. Of the total collected, about 77%, or \$6.6 million, resulted from garnishment of the debtor's

PFD—funds that most likely would not have been recovered but for the effort of the Collections Unit.

The unit collected approximately \$2.1 million in restitution payments owed to crime victims. The unit also collected surcharges and incarceration costs for the Department of Corrections (over \$1.1 million); costs of appointed counsel for the Public Defender Agency (over \$600,000); police training surcharges (\$70,000); and more than \$4.6 million in court fines, minor offense fines, forfeited bonds, and civil attorney's fee awards.



"We express appreciation to Onboard Media, Royal Media, and Panoff Publishing for working with the state to ensure that ethical and fair business practices are followed."

- Attorney General Michael Geraghty (Port Promotion Settlement)

Commercial and Fair Business

The Commercial and Fair Business Section, which includes the Consumer Protection and Antitrust Unit, represents and advises 16 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 2013, the unit received and processed over 425 consumer complaints; the majority of these related to retail sales, telemarketing and "do not call" issues, home repair and construction, auto sales and repair, and tourism issues. 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 almost \$16 million for consumers and the State. Below are notable results achieved by the unit in 2013.

Lynden Transportation Settlement

- The State resolved an antitrust investigation into the sale of Northland Transportation Company to Lynden Transportation, Inc., which would have resulted in one company owning virtually 100% of the market

for delivery by barge of cargo in Southeast Alaska.

- The State and Lynden entered a court-approved consent decree to protect consumers against potential monopoly pricing. The decree requires Lynden to divest to Samson Tug & Barge Company the assets Northland had used to service Southeast Alaska.
- The decree protects consumers and preserves competition by creating incentives for Samson, an established, family-run barge business located in Sitka, to grow into the market and become an effective competitor of Lynden.

Port Promotion Settlement

- The State settled consumer protection claims against Onboard Media, Inc., Royal Media Promotions, Inc., and Panoff Publishing Company related to port shopping programs conducted on cruise ships in Alaska.
- The onboard promotion companies agreed to tell passengers that the retail stores they recommend pay advertising fees and sales commissions to the promotion companies. The companies also agreed to enhance oversight of the contractors they hire to hold shopping presentations onboard, and to ensure local businesses that are not part of the shopping promotion program will not be disparaged.

- The companies paid a total of \$210,000 to the State.

Affinion Settlement

- The State of Alaska, along with 46 other states and the District of Columbia, alleged that Connecticut-based Affinion and its subsidiaries Trilegiant and Webloyalty misled consumers into signing up for discount and membership clubs without their consent or knowledge, usually after completing online transactions with retailers, banks, and other marketing partners. Consumers were then billed monthly fees that continued indefinitely.
- Alaska joined a multi-state settlement prohibiting these practices. Affinion paid the State of Alaska \$450,000 and established a fund of \$19 million to provide refunds to consumers nationwide.

Google Street View Settlement

- Alaska worked with 39 other states to settle claims against Google that the internet company collected consumer data, including email communications and potentially personal information, from unsecured wireless networks while taking photographs for Google Street View between 2008 and 2010.
- Under the agreement, Google disabled or removed the equipment and software used to collect the data. The company is banned from collecting

such information in the future without notice and consent, and it will destroy the collected data as soon as legally practicable. Google agreed that the data was not shared or used, and will not be used, in any product or service.

- Alaska received \$95,334 under the agreement.

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, 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 2013, the litigation yielded settlements over \$12 million (Abbot - \$1.5 million; Aventis - \$1.0 million; McKesson - \$4.25 million, Novartis - \$1.2 million, and Pfizer - \$4.2 million).
- Trial against the last remaining defendant—Johnson & Johnson—is scheduled for late 2014.

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. The following cases exemplify the varying environmental issues the section addresses.

Arbitration of 2006 BP Pipeline Spills and Shutdown Cases

- The State of Alaska won a multi-million dollar arbitration award against BP Exploration (Alaska) Inc.
- The dispute related to oil production shortfalls caused by the 2006 pipeline leaks and pipeline replacements in the Prudhoe Bay oilfield. BP admitted liability for purposes of the arbitration, but contended that the State suffered no losses and asked the arbitration panel to award zero damages.
- Following a four week hearing in 2012, the three arbitrator panel issued a unanimous decision in favor of the State.
- After adjustment for previously agreed upon credits, the final arbitration award with prejudgment interest was \$245 million; in addition, BP paid \$10 million to settle environmental claims. In total, BP paid the State \$255

million for the 2006 spills and pipeline shutdowns.

U.S. Supreme Court to Review GHG Regulations

- The State intervened in a case challenging the Environmental Protection Agency's (EPA's) Greenhouse Gas Endangerment finding. The EPA relied on this finding to not only regulate cars and trucks, but also stationary sources.
- The State, the U.S. Chamber of Commerce and the American Farm Bureau Federation filed a petition for certiorari with the U.S. Supreme Court, after the D.C. Circuit Court of Appeals upheld regulations based on the finding. This was one of numerous petitions filed on this issue.
- The U.S. Supreme Court granted certiorari to answer the question: "Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases." The resulting opinion from the court should clarify how far the federal government's authority extends in limiting greenhouse gases under the Clean Air Act.
- Oral argument before the U.S. Supreme Court will occur on February 24, 2014.

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. The following highlights and accomplishments represent issues the section addressed in 2013.

Accomplishments/Highlights

- The section represented DHSS in 10 superior court cases related to the public assistance programs. These cases primarily sought injunctive relief, requiring accelerated motion practice by the section attorneys.
- The section was instrumental in advising DHSS through significant changes in its Medicaid programs, including representing DHSS in over 50 hearings related to recipient benefits.
- The section engaged in third party recovery efforts, including defending DHSS in administrative hearings involving Medicaid audits, resulting in the recovery of over \$2 million for the Medicaid program.
- The section helped implement SB 86, which expanded DHSS's ability to protect adults who have been financially exploited.



Information and Project Support

The Information and Project Support Section advises the department and other state agencies on the management, exchange, and disclosure of information and records. The section also operates the Civil Division's electronic discovery and legal hold applications and accounting, timekeeping, and case-management database.

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 that requests are understandable; records are preserved; deadlines are met; extensions are appropriate; chargeable costs are estimated and paid in advance of searches, when appropriate; searches are reasonable; protected information is identified, properly handled, and logged; all information that is not protected by law is provided to requestors; denials comply with the regulations; and appeals are properly addressed.
- The section developed procedures and templates for placing legal holds on information the State must retain, and trained attorneys and agencies. The section worked with department attorneys to assist their client agencies in the implementation process.
- The section advised Enterprise Technology Services (ETS), in the Department of Administration, on the decommissioning of the State's inactive email archiving system and to ensure that the State's email system complies with the State's records retention obligations.



“The State’s commitment to Alaska remains steadfast to ensure all Alaska voters are able to exercise their right to vote, free from race or language discrimination.”

- Alaska Attorney General Michael Geraghty (Voting Rights Act)

Labor and State Affairs

The Labor and State Affairs Section handles a wide range of issues unique to the operation of state government including election law, retirement and benefits, public contracts, and employment matters. This section also advises several prominent public corporations: the Alaska Energy Authority, the Alaska Industrial Development & Export Authority, and the Alaska Permanent Fund Corporation. A few cases exemplifying the section’s work are highlighted below:

Section 4 of the Federal Voting Rights Act – *Alaska v. Holder*; *Shelby County, AL v. Holder*

- Attorneys from the Labor & State Affairs and Opinion, Appeals, & Ethics sections successfully participated in litigation to invalidate the 2006 reauthorization of Sections 4 and 5 of the Voting Rights Act (VRA), which created a formula to identify jurisdictions that have histories of discrimination in voting (Section 4) and then required those jurisdictions to get federal approval (known as preclearance) before any change to voting laws or practices could be implemented (Section 5).
- The State filed a lawsuit in the District of Columbia challenging the constitutionality of Sections 4 and 5. That lawsuit was stayed pending the outcome of the appeal in *Shelby County, AL v. Holder*, heard by the U.S. Supreme Court in February

2013, which also challenged the constitutionality of the reauthorization of Sections 4 and 5 of the VRA. The State filed amicus briefs in support of *Shelby County’s* petition for certiorari and at the merits stage, for which the department received a Best Brief Award from the National Association of Attorneys General.

- In June 2013, the U.S. Supreme Court held that the 2006 reauthorization of Section 4 of the Voting Rights Act was unconstitutional. It did not reach the question of Section 5’s constitutionality.
- As a result, the State of Alaska is no longer required to submit voting law or practice changes to the Department of Justice for approval. Citizens who believe an Alaska voting law or practice is discriminatory may still file a lawsuit against the State under the remaining provisions of the VRA.

State Procurement and Contract Disputes

- The section advises executive branch agencies in the procurement of lease space, goods and services, and professional services, and represents state agencies in procurement and contract disputes.
- Last year, the section successfully defended state laws authorizing participation in cooperative purchasing contracts with other states and

political subdivisions, which results in significant savings to the State.

Same-Sex Benefits

- In the last several years, issues have arisen with regards to same-sex partners and benefits. The section advises state agencies about this emerging area of law and the state and federal court opinions that impact it.
- Last year, the section advised state agencies on how this area of law applies to municipal tax exemptions, family leave issues, and health benefits for same-sex partners in Alaska.
- The State is currently defending a lawsuit pending before the Alaska Supreme Court, Schmidt v. Municipality of Anchorage/State of Alaska, that should address some of the lingering issues in this area.

Alleged Sexual Harassment of and Retaliation Against DOT&PF Employee

- The section expends considerable time defending the State in employment actions. In one case, a former equipment operator for the Department of Transportation and Public Facilities (DOT&PF), sued DOT&PF in federal district court alleging violations of Title VII of the Civil Rights Act of 1964. The

operator (who is male) alleged that he was sexually harassed by his male supervisor in a handful of incidents over a period of several months. Specifically, the operator based his harassment claim on a relatively novel legal theory of same-sex “gender stereotyping”—essentially maintaining that he was targeted because he was effeminate. He relatedly claimed that he was terminated (two and a half years later) in retaliation for reporting the harassment.

- The State filed for summary judgment, arguing that the operator’s negative interactions with his supervisor and co-workers were not because of gender. The State’s position was that while the supervisor’s comments had sexual connotations and were inappropriate, the supervisor’s conduct was motivated by workplace disputes and personality conflicts, not gender.
- In addition, the State argued that DOT&PF and the Division of Personnel responded appropriately to stop the conduct. Regarding the claim of retaliation, the State’s primary contention was that the two and a half year period between the operator’s alleged protected activity and his termination negated causation.
- In a lengthy and thorough opinion, the federal district court granted the State’s motion for summary judgment in its entirety in September 2013.

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 with a total of 144 attendees. The section also provided internal training on regulations, legislation and public outreach for department attorneys. Finally, the section prepared the 2013 edition of the Drafting Manual for Administrative Regulations, which is required under AS 44.62.050.

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 listing of ringed and bearded seals under the Endangered Species Act; numerous assertions by the State of its rights to roads and navigable waterways; and advising and defending the Board of Fisheries and Board of Game. Two notable cases from this past year are described below.

Polar Bear Critical Habitat Designation Vacated

- In 2011 the State sued the U.S. Fish and Wildlife Service (USFWS) over the federal designation of 187,000 square miles of Alaskan and adjacent waters as critical habitat for polar bears.
- The State contended the USFWS offered little or no evidence of physical or biological features that are essential to polar bear conservation.
- Additional lawsuits were filed by the Alaska Oil and Gas Association, the American Petroleum Institute, Arctic Slope Regional Corporation, the North Slope Borough and others.
- In January 2013, the District Court vacated the critical habitat designation for, among other things, a lack of evidence showing that each primary constituent element was present in each area designated as critical habitat and a failure to properly respond to state comments.
- The USFWS and Center for Biological Diversity sought to amend the judgment by challenging the need to remand the entire rule. The court denied their motion.
- The case is now on appeal before the Ninth Circuit.

"Litigation is always a last resort, but we will not stand by while the federal government restricts public access to State-owned rights-of-way."

- Alaska Attorney General Michael Geraghty (on RS 2477 litigation)

R.S. 2477 Rights-of-Way Around Chicken, Alaska

- The State filed suit against the United States and others, asserting ownership of six R.S. 2477 rights-of-way in the Chicken, Alaska area.
- Revised Statute 2477 (R.S. 2477), contained in section 8 of the Mining Law of 1866, granted states and territories rights-of-way over unreserved federal lands. The law remained in effect until repealed in 1976. Although no new rights-of-way could be established, the 1976 repeal of R.S. 2477 did not extinguish pre-existing rights already created under the revised statute.
- A significant number of R.S. 2477 rights-of-way exist in the historic Fortymile mining area near Chicken, Alaska. Many of these rights-of-way were created not long after gold was first discovered in the area in 1874.
- The six rights-of-way asserted by the State in this case total approximately 65 miles of roads and trails, and cover a geographic area of approximately 400 square miles. All of the rights-of-way continue to serve as important access for miners, hunters, trappers, recreationalists and subsistence users.
- The Bureau of Land Management (BLM) has failed to recognize the State's right to any of the rights-of-way included in this lawsuit. Additionally, BLM has sought to impose significant management restrictions on use of the rights-of-way.



*Historical photo of Fortymile mining
area near Chicken, Alaska*

Oil, Gas and Mining

The Oil, Gas and Mining Section represents the Department of Natural Resources (DNR), the Department of Revenue (DOR), and the Alaska Oil and Gas Conservation Commission (AOGCC). The section protects Alaska's interest in the development of oil and gas resources, and the state's receipt of petroleum taxes and royalties. Last year, the section assisted its clients in both transactional and litigation matters, including the following examples.

Gasline Projects

- Section attorneys provide legal support to advance a gas pipeline to transport natural gas from the North Slope for in-state use and export.
- The State continues to work with its Alaska Gasline Inducement Act (AGIA) licensee, TransCanada, to advance a large-scale liquefied natural gas (LNG) pipeline project. Section attorneys advise DNR and DOR on legal issues related to the commercial, financial, and regulatory development of a large-scale LNG project and on the expected transition from AGIA to other commercialization efforts appropriate for a multi-party LNG project.

Alaskan Crude Corporation v. AOGCC

- The section represented AOGCC in an Alaska Supreme Court case in which the court upheld a state environmental protection requirement.

- The case centered on Alaskan Crude Corp.'s Burglin 33-1 well on the North Slope. Alaskan Crude sought AOGCC approval to reopen the well, which had been drilled and suspended in the 1980s. Alaskan Crude asked AOGCC to classify the well as a gas facility, which would have exempted the well from oil discharge response requirements. AOGCC declined because it knew from past experience that parts of the formation that Alaskan Crude wanted to test had the capability of flowing oil to the surface.
- The court upheld AOGCC's classification of the well and its related response planning standard to protect the environment.

Tesoro Corporation v. DOR

- The section prevailed in an Alaska Supreme Court case in which a company challenged Alaska's corporate income tax law.
- Alaska's law apportions a company's worldwide income to determine the share of income Alaska may tax. This apportionment applies where the company operates in a unitary manner with its Alaska subsidiaries, which is determined by a number of considerations including whether the subsidiary and parent-corporation are functionally integrated. Alaska's tax law and DOR's application of the law were upheld by the court.

Opinions, Appeals and Ethics

The attorneys in the Opinions, Appeals, and Ethics Section 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. Section attorneys are often asked to lend their legal research and writing skills to other important litigation. In this role, section attorneys filed a case defending the State's authority to manage natural resource development of state land.

Authority to manage state resources – *State v. Lake and Peninsula Borough*

- In March 2011, a group sponsored an initiative in the Lake and Peninsula Borough to enact a local law called "Save Our Salmon." The proposed law would amend the borough code to prevent development of any large-scale resource extraction

activity that would have "significant adverse impacts" on waterways, as determined by the borough.

- The initiative passed by a vote of 280 to 246.
- The State filed suit, alleging that Article VIII of the Alaska Constitution gives management authority of state resources to the State, not to local governments. Recognizing the central role that resource development would play in Alaska's future, the constitutional convention delegates expressly provided that the State should implement the policies and principles in the Alaska Constitution to assure that our resources would be managed through a balancing of interests for the benefit of all Alaskans.
- Oral argument was held in September 2013; a decision is expected by March 2014.



Photo © Sheena Scott

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 (water, electric power, natural gas for 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. Three cases RAPA addressed last year are highlighted below.

Alaska Power & Telephone's Petition to Abandon Utility Service

- Alaska Power & Telephone (AP&T) provides local and long distance telephone service and electric utility service to approximately 20 communities in Alaska, including a number of isolated rural villages throughout Alaska. AP&T petitioned the RCA in 2012 to allow it to abandon providing utility service to two of these small isolated communities, Chisana and Healy Lake. AP&T argued the small population size and high cost of service justified abandoning utility service.
- RAPA investigated the utility's claims, finding the utility's economic hardship claims overstated, and that applicable

precedent and law did not support the utility's requests.

- The RCA agreed with RAPA's analysis and denied the utility's abandonment requests.

Municipal Light & Power Depreciation Rates

- Municipal Light & Power (ML&P) is owned by the Municipality of Anchorage and provides electric power service within parts of the municipality. It is regulated by the RCA, and like most regulated utilities, it must periodically file depreciation studies to evaluate the lifespan of utility plant assets and the method by which these plant assets depreciate over time. The established depreciation rates are then used to determine annual amounts of depreciation expense which is applied in a rate case to set consumer rates.
- ML&P filed a depreciation study in 2012, and RAPA evaluated whether the depreciation rates ML&P filed were reasonable. RAPA's investigation found these rates excessive, recommending ML&P's depreciation expense be reduced by approximately \$1.6 million.
- A settlement approved by the RCA resulted in a \$1.03 million reduction in ML&P's depreciation expense. In part because of this settlement, ML&P's consumers will receive a refund in 2014.

Chugach Electric Association Petition for Storm Damage Cost Recovery

- Chugach Electric Association (Chugach) provides electric utility service in the Anchorage bowl and in parts of the Kenai Peninsula. It claimed to have incurred over \$1.8 million in costs to restore electric power to its customers after a wind storm struck the Anchorage bowl in September 2012. Chugach requested

the RCA allow it to recover these costs in consumer rates.

- RAPA investigated the request and at trial in 2013 before the RCA showed Chugach's existing rates already compensate Chugach each year for costs associated with storm damage repairs. Chugach's evidence did not establish its September storm-related costs exceeded those already covered by existing rates. The RCA denied Chugach's rate increase request.

Torts and Workers' Compensation

The Torts and Workers' Compensation Section defends the State and its employees in tort lawsuits, and represents the State as an employer before the Alaska Workers' Compensation Board. The tort claims handled by the section range from personal injury and property damage to medical malpractice, wrongful death, and civil rights.

Containing Costs of Litigation Through Motion Practice

- The section pursues aggressive motion practice whenever possible to contain the ultimate costs of litigation in tort cases. In nearly 20 cases in 2013, the section prevailed on motions to dismiss or for summary judgment—terminating the cases favorably without trial. Of particular note:

- Weeks before trial was to begin in a medical malpractice case regarding medication provided to a man while he was an inmate at the Fairbanks Correctional Center, the section, representing a state employee physician's assistant, prevailed on three dispositive motions. The court found among other things that, despite being given numerous opportunities over a lengthy period of time, the plaintiffs failed to produce necessary expert evidence supportive of their claims. The case was dismissed without trial.
- In a defamation case filed against former Governor Sarah Palin, the federal court granted a motion to dismiss, finding that the plaintiff did not have a viable claim for damages.

Substitution of the State for an Employee Defendant

- AS 09.50.253 allows the State to substitute as a party in place of individual state employee defendants in certain types of cases. This substitution occurs when the Attorney General certifies that the defendant employee was acting within the scope of employment. The State's defenses then apply to those claims.
- A plaintiff can challenge the Attorney General's certification decision through an evidentiary hearing.
- The section participated in four evidentiary hearings on substitution in 2013. The court affirmed certification and substitution of the State in all of those cases.

Immunity – *Hill v. Giani*

- In a case related to the licensing of an assisted living home, the Alaska Supreme Court found that immunity established by the Legislature in AS 47.32.160 barred tort claims against the State and a state licensing worker. The Court also affirmed that the operator of the assisted living home had no viable civil rights claim against the licensing worker, so all claims against the State and the state employee were properly dismissed without trial.
- The case returned to the lower court for a trial of claims against an individual who had reported possible abuse or neglect of a vulnerable adult because, in a split decision, the Court held that the immunity for good faith reporting in AS 47.24.120 could not be applied without trial.



“Our goal in this litigation has always been to ensure Alaska’s residents have reliable ferry service. This settlement accomplishes that goal.”

- Alaska Attorney General Michael Geraghty (fast ferry litigation)

Transportation

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. Two matters that represent the range of issues addressed by the section over the past year are described below.

Fast Ferry Litigation

- The engines in the fast ferries Chenega and Fairweather began degrading shortly after the vessels were delivered to the State. The State sued both the shipyard that built the vessels’ engines and the engine manufacturer.
- After more than three years of litigation, and following the bankruptcy of the shipyard, the State settled with the engine manufacturer. The settlement has a value of approximately \$40 million to the State.

- The settlement requires the engine manufacturer to replace all eight of the engines in the two vessels with new, more powerful engines. The manufacturer agreed to maintain and service the new engines for five years after installation, and to warrant their components for 20 months. The State was also allowed to purchase two spare engines at a discounted price.

International Airport Operating Agreement

- The Alaska International Airport System, consisting of Anchorage and Fairbanks International Airports, is funded entirely from operating revenues. To assure that revenues are sufficient to cover operating expenses, AIAS enters into an Operating Agreement with the major cargo and passenger carriers using the two facilities.
- The Agreement covers key aspects of airport operations, such as calculation of fees and rents, leasing policies, maintenance responsibilities, fuel pricing for signatory airlines, capital project funding, and environmental responsibilities.
- Successfully negotiating the latest renewal of the Operating Agreement required a concerted and coordinated effort between the Department of Law and Airport management. Work started in early 2012 and concluded in July of 2013, when AIAS and 31 carriers signed a new Agreement covering airport operations for the next 10 years.



Administrative Services Division

The Division of Administrative Services provides administrative support to the Civil and Criminal Divisions to fulfill the mission of the department. Its functions include procurement, information technology, budget, financial management (including funds collected and disbursed as court-ordered restitution for victims of crime), timekeeping, and human resources.



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

Highlights include:

- The division helped the department collect and manage in excess of \$400 million of awards and collections.
- The division administered over 169 professional services contracts, managed a nearly \$100 million budget and managed the information technology for the department. The information technology continued to grow with:
 - the expanded deployment of the Civil Division case management system;
 - the development of a receipting program to improve the process of collecting and disbursing funds, including restitution;
 - 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 litigation and responding to public records requests.
- The department is replacing the Criminal Division's obsolete case management system with a system that is up to current business standards. The division plans to configure and deploy the system statewide in the coming year.
- Efforts are underway to deploy CITRIX, a remote connectivity service. Initial deployment to the Civil Division's rural offices enabled the offices to use the division's 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 implemented a high speed scanning process in our core locations increasing productivity and floor space by allowing for high speed document management and the elimination of boxes of physical media in the office space.
- The division provided personnel training related to performance management and performance coaching to employees in the Civil and Criminal Divisions, as well as training to employees statewide on personnel matters pursuant to a Memorandum of Agreement with the Division of Personnel, Department of Administration.



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