

- Transportation. Section attorneys defended multiple contractor claims filed against the Department of Transportation and Public Facilities. Included among the larger cases were claims arising from road construction and airport projects in the Central and Southeast regions.

**Promoting and Defending Good Governance**

- Labor and State Affairs. Advised the Office of the Lieutenant Governor on issues, litigation, legislations and regulations stemming from the 2020 election cycle and implementation of the ranked choice voting initiative.
- Labor and State Affairs. Along with other attorneys in the department, advised the Office of the Governor, the Department of Administration, the Department of Commerce, Community, and Economic Development, the Office of Management and Budget, and other agencies regarding application of the Disaster Act during the pandemic and the distribution of federal funds to the state to mitigate impacts from the pandemic.
- Opinions, Appeals and Ethics. The section promoted and enforced compliance with the Alaska Executive Branch Ethics Act by advising individuals and agencies on ethics questions, presenting ethics trainings, drafting ethics opinions and memoranda of advice, and investigating and resolving ethics complaints against former or current state employees.
- Legislation and Regulations. Coordinated and drafted legislative bills on behalf of the administration for the first year of the 32nd legislative session, including four special sessions.

**Key Department Challenges**

**Criminal Division**

The two greatest challenges for the Criminal Division have been, and continue to be, the growing backlog of cases resulting from suspending jury trials due to COVID-19 and addressing the division’s recruitment and retention challenges. The number of pending criminal cases in the court system has almost doubled since 2018, with the greatest growth seen during the pandemic.

Pending Criminal Cases 2018-2021

| Case Type    | 9/11/2018     | 9/11/2019     | 9/11/2020     | 9/11/2021     |
|--------------|---------------|---------------|---------------|---------------|
| Felony       | 4,514         | 5,145         | 6,486         | 7,328         |
| Misdemeanor  | 7,872         | 9,593         | 12,564        | 12,756        |
| <b>Total</b> | <b>12,386</b> | <b>14,738</b> | <b>19,050</b> | <b>20,084</b> |

The suspension of jury trials not only means jury trials do not occur, but also means many cases that normally resolve via plea negotiations have stalled without the threat of a jury trial looming in the near future. The resumption of jury trials is expected to occur in early CY2022 and this will certainly help decrease the number the cases pending, but it is unlikely the mere resumption of jury trials will be sufficient to return the numbers of pending criminal cases to pre-pandemic levels anytime soon. This equals delayed justice for victims and greater caseloads for prosecutors who were already struggling under very high caseloads.

While the Criminal Division has been making efforts to improve recruitment and retention, the backlog of cases due to suspension of jury trials only exasperates one of the Criminal Division’s challenges in recruitment and retention: high workloads and burnout. Though high workloads and burnout are not the only issues the division faces in recruitment and retention, they are significant factors.

**Civil Division**

**Protecting children, vulnerable adults and consumers is at the core of the Civil Division's mission to protect both the physical and financial well-being of Alaskans.**

- Child Protection. Shrinking division resources and increasing caseloads on a statewide basis are presenting significant challenges for the section. High attorney caseloads and shrinking resources increase costs to the

state and lead to longer stays in foster care for children who could otherwise find permanency in their "forever home." The limited resources and growing caseloads could also negatively impact the amount of federal Title IV-E dollars the state is entitled to receive in reimbursement for eligible legal services performed in CINA cases, thereby increasing the amount of general funds needed to perform the work.

- Human Services. Attorney caseloads continue to increase each year, mainly because Alaska has one of the fastest growing aging populations in the nation. In addition, the section anticipates a significant increase in the number and complexity of regulation projects designed to assist in creating additional efficiencies in the administration of all DHSS programs. These projects are expected to generate litigation as change to programs and funding streams are implemented in the coming fiscal year.
- Consumer Protection. Alaska is a target state for many types of consumer fraud. Under the authority of the Consumer Protection Act (AS 45.50.471 et seq.), the state section investigates and brings enforcement action against businesses that engage in unfair or deceptive trade practices. Because of vacancies and current budget constraints, the department's consumer protection enforcement capacity has been significantly limited in the last few years. Collaboration between the Commercial and Fair Business section and the Special Litigation section to increase its consumer protection enforcement functions continues.

### **Fostering the Conditions for Economic Opportunity and Responsible Development and Use of Natural Resources**

- Environmental Law. Position reductions have limited the ability to pursue cleanup of "lingering contaminated sites" where there is no responsible party undertaking a cleanup. Another challenge is engaging federal agencies on matters and decisions that affect the state's interests.
- Natural Resources. Defending the state's interests and goals from increasing restrictions under federal statutes and regulations continues to expand the section's caseload and requires strategically selecting the cases for litigation that are most likely to achieve the state's goals.

### **Protecting the Fiscal Integrity of the State**

- Labor and State Affairs. Prior to the pandemic, the section's attorneys already had full workloads, and the pandemic has only increased these workloads and required a lot of urgent work in areas such as emergency regulations, health mandates, administrative orders, etc. In addition, the section suffers from a lack of deep experience due to retirements and turnover. Recruitment continues to be difficult, producing only small pools of applicants and creating the need to advertise the position multiple times before a qualified candidate can be identified.
- Natural Resources. The section is pursuing hundreds of millions of dollars in past-due taxes, interest and penalties owed by oil and gas producers and other corporate taxpayers. Representing the Department of Natural Resources in royalty disputes and negotiations to ensure that the state receives the appropriate share of royalties and net profit share from production continues to be a challenge with reduced staffing.
- Natural Resources. Defending the state's interests and goals from increasing restrictions under federal statutes and regulations as well as lawsuits from environmental groups to broaden the reach of federal laws continues to expand the section's caseload. In addition, attorney turnover and a difficult recruiting environment coupled with a high volume of work has negatively impacted the section's ability to deliver timely client services for non-oil and gas programs.

### **Promoting and Defending Good Governance**

- Information and Project Support. The section's key challenges include continuing (1) to respond to and to advise and train agencies on responding to public records requests, (2) to advise and train agencies on protecting privileged and confidential information, (3) to make e-Discovery and legal hold tools available and to assist with e-Discovery and the implementation of legal holds, (4) to operate and train employees on the division's matter-management system, and (5) to advise agencies on records retention and Open Meetings Act issues.

- Opinions, Appeals and Ethics. A key challenge for the section is to lend its expertise in appellate briefing and argument to all Civil Division sections, given the volume of appeals to which the state is a party. At any given time, the Civil Division has between 100 and 150 civil appeals pending, 25-30 of which are child protection cases involving child abuse and neglect. The section directly handles all of the child protection appeals statewide, as well as all appeals of civil commitments statewide. The section also directly handles appeals in cases that concern constitutional and legal issues of particular import.

### **Significant Changes in Results to be Delivered in FY2023**

The department is continuously assessing how it can better provide legal services to state agencies and prosecute criminal activity in order to increase public safety. In light of the current environment, the department has made every effort to redirect and consolidate available resources in order to ensure efficiency while preserving effectiveness.

The Criminal Division's significant changes in results for FY2022 will hopefully address the division's biggest challenges. The division hopes jury trials will resume that should help decrease a crushing workload, even if that resumption cannot completely address the high caseloads. The Criminal Division is also working to improve its recruitment and retention for both existing employees and for the prosecutors and staff add in FY2022. Increased training for both new and existing prosecutors and staff remains a focus of the division. In the meantime, the reduced crime rate over the last several years with the increased filings in criminal cases bodes well for Alaska if the same level prosecution service remains.

Recent changes to the Civil Division include increasing the number of attorneys working primarily with DNR on challenges to actions of the federal government that reduce Alaska's ability to develop natural resources. The Civil Division is also strengthening its legislation and regulations work, to streamline drafting and review of proposed and passed state laws.

| <b>Contact Information</b>                                                                                |                                                                                                                                   |
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