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Program Evaluation Report, Office of the Maine Attorney General

Office of the Maine Attorney General

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Program Evaluation Report

Office of the Attorney General

PRESENTED TO THE JOINT STANDING COMMITTEE ON JUDICIARY

125st LEGISLATURE

SUBMITTED NOVEMBER 15, 2011

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3 MRSA §956(2)

2. Program evaluation report; contents. Each report must include the following information in a concise but complete manner:

- A. Enabling or authorizing law or other relevant mandate, including any federal mandates;
- B. A description of each program administered by the agency or independent agency, including the following for each program:
 - (1) Established priorities, including the goals and objectives in meeting each priority;
 - (2) Performance criteria, timetables or other benchmarks used by the agency to measure its progress in achieving the goals and objectives; and
 - (3) An assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance criteria. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet the goals and objectives;
- C. Organizational structure, including a position count, a job classification and an organizational flow chart indicating lines of responsibility;
- D. Compliance with federal and state health and safety laws, including the Americans with Disabilities Act, the federal Occupational Safety and Health Act, affirmative action requirements and workers' compensation;
- E. Financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the past 10 years;
- F. When applicable, the regulatory agenda and the summary of rules adopted;
- G. Identification of those areas where an agency has coordinated its efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements, including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements;
- H. Identification of the constituencies served by the agency or program, noting any changes or projected changes;
- I. A summary of efforts by an agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives;
- J. Identification of emerging issues for the agency or program in the coming years;
- K. Any other information specifically requested by the committee of jurisdiction;
- L. A comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program;
- M. Agency policies for collecting, managing and using personal information over the Internet and nonelectronically, information on the agency's implementation of information technologies

and an evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement; and

N. A list of reports, applications and other similar paperwork required to be filed with the agency by the public. The list must include:

- (1) The statutory authority for each filing requirement;
- (2) The date each filing requirement was adopted or last amended by the agency;
- (3) The frequency that filing is required;
- (4) The number of filings received annually for the last 2 years and the number anticipated to be received annually for the next 2 years; and
- (5) A description of the actions taken or contemplated by the agency to reduce filing requirements and paperwork duplication.

A. Enabling Law

Article IX, Section 11 of the Maine Constitution provides: “The Attorney General shall be chosen biennially by joint ballot of the Senators and Representatives in convention.” Under 5 M.R.S.A. § 191-A, the Attorney General-elect then takes office after a transition period of not less than 30 days.

In 1905, the Legislature enacted what now appears as 5 M.R.S.A. § 191, *et seq.* Laws of Maine of 1905, ch. 162. These laws direct the Attorney General to discharge various responsibilities including: represent the State and its agencies in civil actions; prosecute claims to recover money for the State; investigate and prosecute homicides and other crimes; consult with and advise the district attorneys; enforce proper application of funds given to public charities in the State; and give written opinions upon questions of law submitted by the Governor, Legislature, or state agencies. The Attorney General may appoint deputy and assistant attorneys general, all of whom serve at his or her pleasure. In addition to these statutory powers, the Attorney General is vested with certain common law powers.

The leading case on the powers and duties of the Attorney General is *Superintendent of Insurance v. Attorney General*, 558 A.2d 1197 (Me. 1989), see attached. The essential principle stated by the Court in this landmark decision is that the Attorney General possesses constitutional and common law authority independent of the agencies represented by the office that may be exercised by the Attorney General in the public interest. Other important cases discussing the powers and duties of the Attorney General include *Lund ex rel. Wilbur v. Pratt*, 308 A.2d 554 (Me. 1973) and *State v. Lane & Libby Fisheries Co.*, 120 Me. 121 (1921).

There are many other state laws that provide or mandate a role for the Attorney General. These are set forth in Attachment A. The Office also works with many federal laws. Federal laws of most concern to the role of the Office are set forth in Appendix B.

558 A.2d 1197
(Cite as: 558 A.2d 1197)

▷

Supreme Judicial Court of Maine.
SUPERINTENDENT OF INSURANCE
v.
ATTORNEY GENERAL.
ATTORNEY GENERAL
v.
SUPERINTENDENT OF INSURANCE.
Dee and Marie BROWN
v.
SUPERINTENDENT OF INSURANCE.

Argued March 15, 1989.
Decided May 19, 1989.

Superintendent of Insurance rendered decision in rate proceeding for nonprofit hospital medical service organization, and nongroup subscribers appealed. The Attorney General also filed action seeking judicial review, and Superintendent filed application for relief in nature of mandamus requesting Attorney General to provide legal services. The three actions were heard together, and the Superior Court, Kennebec County, Chandler, J., granted the request for writ and barred the Attorney General from seeking review. Attorney General appealed. The Supreme Judicial Court, Wathen, J., held that: (1) Attorney General was not required to represent Superintendent; (2) Attorney General had standing to seek review; and (3) Attorney General was not barred from seeking review based on conflict of interest.

Vacated and remanded.

West Headnotes

[1] Attorney General 46 ⚡6

46 Attorney General
46k5 Powers and Duties
46k6 k. In General. Most Cited Cases
Attorney General was not obligated to render representation to Superintendent of Insurance in ac-

tion seeking review of rate order where Attorney General had filed separate action seeking judicial review of denial of Superintendent's decision denying reopening.

[2] Insurance 217 ⚡1545(7)

217 Insurance
217VIII Underwriting
217k1540 Rates and Rate Setting
217k1545 Actions and Proceedings
217k1545(7) k. Review. Most Cited

Cases

(Formerly 217k11.7)

Statute allowing any party to rate proceedings for nonprofit hospital or medical service organization to appeal was not inconsistent with statute limiting judicial review of administrative proceedings to aggrieved persons; latter general statute contained no language precluding other statutory grants. 24 M.R.S.A. §§ 2301 et seq., 2326; 24-A M.R.S.A. § 236, subd. 3; 5 M.R.S.A. §§ 8003, 11001, subd. 1.

[3] Attorney General 46 ⚡7

46 Attorney General
46k5 Powers and Duties
46k7 k. Bringing and Prosecution of Actions.
Most Cited Cases

Attorney General was not precluded from bringing action for judicial review of rate decision of Superintendent of Insurance on basis of conflict of interest arising from staff members of Attorney General having assisted Superintendent in rendering his initial decision.

[4] Attorney General 46 ⚡6

46 Attorney General
46k5 Powers and Duties
46k6 k. In General. Most Cited Cases
When Attorney General disagrees with state agency, he is not disqualified from participating in suit affecting public interest merely because mem-

bers of his staff had previously provided representation to agency at administrative stage of proceedings.

*1198 James T. Kilbreth (orally), Chief Deputy Atty. Gen., Thomas D. Warren, Deputy Atty. Gen., Augusta, for appellants.

Hugh Calkins, Linda Christ, Pine Tree Legal Assistance, Inc., Ronald A. Kreisman, Natural Resources Council of Maine, Augusta, amici curiae.

Peter Murray (orally), Michael L. Parker, Murray, Plumb & Murray, Portland, for appellees.

Before McKUSICK, C.J., and ROBERTS, WATHEN, GLASSMAN, CLIFFORD and COLLINS, JJ.

WATHEN, Justice.

The initial question presented on this appeal is whether the Attorney General is obligated to represent and defend the Superintendent of Insurance in an action seeking review of a rate order issued by the Superintendent. Further questions are raised concerning the Attorney General's standing to seek judicial review of the rate order in his own right, and whether such an action is barred by the fact that his office advised and assisted the Superintendent during the administrative hearings. We conclude that the Superior Court (Kennebec County, *Chandler, J.*) erred in ordering the Attorney General to represent the Superintendent in court and erred in dismissing the Attorney General from the actions seeking judicial review.

The present controversy, involving three separate actions, arises from a public hearing held by the Superintendent pursuant to 24 M.R.S.A. § 2322 (Supp.1988-1989) on a proposal of Associated Hospital Services of Maine for an increase in Blue Cross and Blue Shield non-group rates. The Consumer and Antitrust Division of the Attorney General's Department moved to intervene in the proceedings and the Superintendent granted the re-

quest. As an intervenor, the Attorney General was represented by Deputy Attorney General Stephen L. Wessler. At the same time Assistant Attorneys General Linda Pistner and James Bowie, both from the General Government Division, counselled the Bureau of Insurance. Together, they advised the Superintendent throughout the course of the rate hearing and assisted him in drafting his decision.

The Superintendent rendered his decision and Deputy Wessler, on behalf of the Attorney General, moved to re-open the matter for the purpose of changing or modifying the order. The Superintendent denied the motion and the Attorney General filed an action seeking judicial review of that denial pursuant to M.R.Civ.P. 80C (*Attorney General v. Superintendent of Insurance*). Dee and Marie Brown, two non-group subscribers, also filed a Rule 80C petition for review of the Superintendent's order (*Brown v. Superintendent of Insurance*). *1199 Assistant Attorney General James Bowie entered a limited appearance for the Superintendent but stated that he would withdraw as soon as the Superintendent had secured private counsel. On the same date, Deputy Wessler entered an appearance in the *Brown* action on behalf of the Attorney General as a party. After retaining private counsel with the approval of the Attorney General,^{FN1} the Superintendent moved to dismiss the Attorney General's 80C action and moved to strike his appearance as a party in Browns' 80C action on the grounds that the Attorney General had "a clear and impermissible conflict of interest and ha[d] no standing to prosecute this appeal." In addition, the Superintendent filed an application for relief in the nature of mandamus (*Superintendent of Insurance v. Attorney General*), requesting that the Attorney General be ordered to provide legal services in *Brown v. Superintendent of Insurance*, to restore the services of Assistant Attorneys General Pistner and Bowie, and to reimburse the Superintendent for legal expenses incurred for private counsel.

FN1. In an effort to accommodate the Superintendent's desire for continued repres-

entation by Bowie and Pistner, the Attorney General attempted to negotiate a mutually satisfactory arrangement involving a "chinese wall." Ultimately, the negotiations were unsuccessful and private counsel was retained by the Superintendent.

Although the three actions were not formally consolidated, they were heard together. After hearing, the Superior Court granted the Superintendent's request for a writ of mandamus and ordered the Attorney General to furnish legal representation to the Superintendent in the *Brown* action. The Superior Court also ruled that the Attorney General is barred from seeking judicial review because his office had advised and assisted the Superintendent with regard to the administrative proceeding. The court held further that the Attorney General has no standing to seek review because he is not representing the interests of the entire public and because he has not suffered any particularized injury sufficient to demonstrate that he was aggrieved. Accordingly, the Superior Court dismissed the Attorney General's 80C action and struck the appearance of the Attorney General as a party in *Brown*. From these orders the Attorney General appeals.

I.

The Attorney General's Obligation to Represent the Superintendent

[1] The Superior Court ruled that 5 M.R.S.A. § 191 (1979) imposes a mandatory duty on the Attorney General to represent agencies and officers of the State of Maine in all civil actions involving their official acts. Under the Superior Court's ruling the Attorney General could decline representation only if he determined that the agency's or officer's decision was "legally, ethically or morally indefensible and not in the public interest." We reject such an interpretation of section 191. The common law duties of the Attorney General, even as modified by statute, involve a greater degree of discretion than is permitted under the ruling of the Superior Court.

We have previously described the office of the

Attorney General in general terms as follows:

The Attorney General, in this State, is a constitutional officer endowed with common law powers. See, Constitution of Maine, Article IX, Section 11. As the chief law officer of the State, he may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may, from time to time require, and may institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and *the protection of public rights*.

Lund ex rel. Wilbur v. Pratt, 308 A.2d 554, 558 (Me.1973) (emphasis in the original). As the historical successor to the English Attorney General, the Attorney General in Maine, as well as in other states, is vested with considerable discretion and autonomy. In this respect, the position of *1200 a state attorney general has been accurately summarized in the following terms:

As a result, the attorneys general of our states have enjoyed a significant degree of autonomy. Their duties and powers typically are not exhaustively defined by either constitution or statute but include all those exercised at common law. There is and has been no doubt that the legislature may deprive the attorney general of specific powers; but in the absence of such legislative action, he typically may exercise all such authority as the public interest requires. And the attorney general has wide discretion in making the determination as to the public interest.

State of Florida ex rel. Shevin v. Exxon Corp., 526 F.2d 266, 268-69 (5th Cir.), cert. denied, 429 U.S. 829, 97 S.Ct. 88, 50 L.Ed.2d 92 (1976).

It is undisputed that at common law the Attorney General did not represent every state official nor was he required to do so. In fact, in 1904 Attorney General George M. Seiders expressed concern over private representation of state agencies and urged that the legal matters of the state should be

attended to exclusively by his office. 1904 *Report of the Attorney General* 22. The following year, the Legislature responded by enacting the statute now codified as 5 M.R.S.A. § 191. We must determine what change, if any, results from the following language of the statute:

The Attorney General, a deputy, assistant, or staff attorney shall appear for the State, the head of any state department, the head of any state institution and agencies of the State in all civil actions and proceedings in which the State is a party or interested, or in which the official acts and doings of said officers are called in question, in all the courts of the State; and in such actions and proceedings before any other tribunal when requested by the Governor or by the Legislature or either branch thereof. All such actions and proceedings shall be prosecuted or defended by him or under his direction. Writs, summonses or other processes served upon such officers shall forthwith be transmitted by them to him. All legal services required by such officers, boards and commissions in matters relating to their official duties shall be rendered by the Attorney General or under his direction. Said officers or agencies of the State shall not act at the expense of the State as counsel, nor employ private counsel except upon prior written approval of the Attorney General....

5 M.R.S.A. § 191.

We are not persuaded that the use of the word "shall" removes all discretion and requires that the Attorney General represent all state agencies regardless of his view of the public interest. Both the history of the enactment of section 191 and its plain language support our conclusion that the Legislature directed the Attorney General to control state litigation and consolidated control in his office without mandating representation in all cases. A contrary conclusion would ignore the provisions of the statute authorizing the employment of private counsel with "written approval of the Attorney General." Our sister Court in Massachusetts has rendered a similar interpretation of a comparable

statute. In *Secretary of Admin. and Finance v. Attorney General*, 367 Mass. 154, 326 N.E.2d 334 (1975), the Court held that the Attorney General's control of the conduct of litigation "includes the power to make a policy determination not to prosecute the Secretary's appeal in this case." *Id.* at 159, 326 N.E. at 336-37. *Accord*, *Feeney v. Commonwealth*, 373 Mass. 359, 366 N.E.2d 1262 (1977). We need not decide whether approval could be withheld for the employment of private counsel because of a disagreement over the public interest. It is sufficient for our purposes to hold that the Attorney General is not obligated to render representation to the Superintendent in these circumstances. Accordingly, in *Superintendent of Insurance v. Attorney General*, the Superior Court erroneously granted relief in the nature of mandamus.

II.

Standing

[2] The Superior Court dismissed the Attorney General's 80C action and struck *1201 his appearance in *Brown*, partly on the basis that the Attorney General is without standing to seek review. Although the applicable insurance law purports to confer standing on any party, the court reasoned that the Administrative Procedures Act (the "A.P.A.") imposes an additional requirement that a party be aggrieved. Finding no particularized injury on the part of the Attorney General, the court found no standing. The court erred in ruling that on appeal from the Superintendent's rate decision, a party is required to show particularized aggrievement in order to have standing. The controlling statute provides otherwise.

The statute regulating rate proceedings for a nonprofit hospital or medical service organization includes the following appeal provision:

Any person whose interests are substantially and directly affected and aggrieved by an order or decision of the superintendent *or any party* to a hearing held pursuant to section 2322 may appeal therefrom as provided in Title 24-A, section 236.

24 M.R.S.A. § 2326 (Supp.1988-1989) (emphasis added). The general provision in the Insurance Code referred to in the quoted statute, provides in relevant part as follows:

Any person who was a party to the hearing may appeal from an order of the superintendent within 30 days after receipt of notice. Any person not a party to the hearing whose interests are substantially and directly affected and who is aggrieved by an order of the superintendent may appeal within 40 days from the date the decision was rendered.

24-A M.R.S.A. § 236(3) (Supp.1988-1989). Despite these specific provisions applicable to insurance rate proceedings, the Superior Court ruled that the A.P.A. limits judicial review to a "person who is aggrieved by final agency action" and that it displaces all inconsistent provisions.

The A.P.A. contains the following general provisions concerning judicial review and inconsistent laws:

Except where a statute provides for direct review or review of a pro forma judicial decree by the Supreme Judicial Court or where judicial review is specifically precluded or the issues therein limited by statute, any person who is aggrieved by final agency action shall be entitled to judicial review thereof in the Superior Court in the manner provided by this subchapter.

5 M.R.S.A. § 11001(1) (Supp.1988-1989).

Except where expressly authorized by statute, any statutory provision now existing or hereafter adopted which is inconsistent with the express provisions of the Maine Administrative Procedure Act shall yield and the applicable provisions of this Act shall govern in its stead.

5 M.R.S.A. § 8003 (1979). Our comparison of the review provisions of the A.P.A. and the Insurance Code reveals no inconsistency. Section 11001 (1) states *only* the entitlement of an aggrieved party to judicial review. The statute contains no language

precluding other statutory grants. Accordingly, there is no conflict with the more expansive grant of standing conferred by 24 M.R.S.A. § 2326 and 24-A M.R.S.A. § 236. The standing claimed by the Attorney General under the Insurance Code as a party is not precluded by the A.P.A.^{FN2}

FN2. We reject the Superintendent's argument that despite the fact that intervention was granted, the Attorney General is not a party because of our opinion in *Central Maine Power Co. v. Public Util. Comm'n.*, 382 A.2d 302 (Me.1978). In that case we held that the Attorney General "cannot have standing to assert the interests of only one segment of ratepayers, the residential-in particular when, as here, such representation might be to the detriment of other groups of ratepayers." *Id.* at 315. *Central Maine* involved rates for both residential and commercial customers and the Attorney General attempted to protect the interests of one group to the detriment of the other. The present case involves only non-group rates. Any advantage achieved in these proceedings, will not necessarily disadvantage any other segment of the public. *Central Maine* is therefore factually inapposite.

III.

Conflict of Interest

[3] As an additional ground for dismissing the Attorney General's 80C action, the *1202 Superior Court ruled that he cannot "attack the decision of a State bureau or agency which received the legal assistance of the Attorney General's office in reaching and drafting that decision." Relying upon a conflict of interest analysis, the court held that the prior representation of the Superintendent by members of the Attorney General's legal staff precluded his action for judicial review. The narrow issue before us may be stated as follows: If an agency is represented in court by independent private counsel, is it ethically permissible for the Attorney General to

seek judicial review of an administrative decision of that agency, even though the agency was counselled by members of his staff during the administrative proceeding?

Because of the multiple duties imposed on the office, the status of the Attorney General is unique. As a member of the bar, he is subject to the ethical standards of the bar, but he is also a constitutional officer charged with common law and statutory duties and powers. As an officer of government he is directed to control and manage the litigation of the State by providing counsel to state agencies and by approving the retention of private counsel. Of at least equal importance, however, is his role as the legal representative of the people of the State in pursuing the public interest. The Superior Court determined that an irreconcilable conflict existed between his duties as a member of the bar and the duties of his office to represent the public interest. The court resolved the conflict by ordering the abandonment of the duty to represent the public interest. The court erred.

The legal dilemma posed by this case has been cogently described in a similar case as follows:

It is glaringly apparent from the pronouncements of this Court, cited above with reference to the attorney general's common law duties and the statute which reaffirms those duties, that he will be confronted with many instances where he must, through his office, furnish legal counsel to two or more agencies with conflicting interest or views. It is also readily apparent that in performing their duties, the agencies will from time to time make decisions, enter orders, take action or adopt rules and regulations which are, in spite of good intentions, either illegal or contrary to the best interest of the general public.

Under our scheme of laws, the attorney general has the duty as a constitutional officer possessed with common law as well as statutory powers and duties to represent or furnish legal counsel to many interests-the State, its agencies, the public

interest and others designated by statute.

Paramount to all of his duties, of course, is his duty to protect the interest of the general public.

The question presented under these circumstances is whether the attorney general must abrogate his responsibility to one or the other.

State ex rel. Allain v. Mississippi Pub. Service Comm'n., 418 So.2d 779, 782 (Miss.1982). A decision in this case requires us to recognize that we are not dealing with private lawyers. Rather, different ethical considerations are at stake here. We are required to balance ethical concerns with concerns for effective representation of both the public interest and public agencies.

In its ruling, the Superior Court failed to specify any particular ethical principle that had been violated. The Superintendent argues, however, that the bar rules forbidding employment that would conflict with the interest of a present or former client are implicated.^{FN3} Initially, we note that *1203 such provisions are principally designed to protect confidential communications between attorney and client. When dealing with public agencies and their lawyers, however, such considerations are of lesser importance. Under our rules of evidence, confidential communications between a public agency and its lawyer are the exception rather than the rule.^{FN4} Moreover, the Attorney General and his staff are not the equivalent of a private law firm. In promulgating the Model Rules of Professional Conduct, the American Bar Association has expressly recognized that lawyers in an attorney general's office

FN3. Maine Bar Rule 3.4 provides in relevant part:

(b) Conflict of Interest. A lawyer shall not accept employment if the exercise of his independent professional judgment in behalf of a client will be, or is likely to be, adversely affected by the acceptance

of such employment, or if it would be likely to involve him in representing differing interests . . .

(c) Multiple Employment Forbidden. A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be, or is likely to be, adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests . . .

(e) Inrest of Former Client. A lawyer shall not accept employment adverse to a former client without that client's informed written consent if such new employment involves the subject matter of the former employment or may involve the use of confidential information obtained through such former employment.

FN4. M.R.Evid 502(d)(6) provides that there is no lawyer client privilege

[a]s to communications between a public officer or agency and its lawyers unless the communications concern a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

ABA Model Code of Professional Responsibility, Preamble, Scope and Terminology at p. 12

(1983). The Committee on Ethics and Professional Responsibility of the American Bar Association observed in Formal Opinion No. 342 (1975):

The relationships among lawyers within a governmental agency are different from those among partners and associates of a law firm. The salaried government employee does not have the financial interest in the success of departmental representation that is inherent in private practice.

The majority of courts confronting similar issues have recognized the unique status of the Attorney General. See *Conn. Comm'n. on Special Revenue v. Conn. Freedom of Information Comm'n.*, 174 Conn. 308, 319, 387 A.2d 533, 537 (1978) ("This special status of the attorney general-where the people of the state are his clients-cannot be disregarded in considering the application of the provisions of the code of professional responsibility to the conduct of his office."); *Feeney v. Comm.*, 373 Mass. at 365-66, 366 N.E.2d at 1266 (In exercising his "common law duty to represent the public interest" the Attorney General "is not constrained by the parameters of the traditional attorney-client relationship."); see also *E.P.A. v. Pollution Control Bd.*, 69 Ill.2d 394, 14 Ill.Dec. 245, 372 N.E.2d 50 (1977); *Commonwealth ex rel. Hancock v. Paxton*, 516 S.W.2d 865 (Ky.1974); *Humphrey ex rel. State v. McLaren*, 402 N.W.2d 535 (Minn.1987); *State ex rel. Allain v. Mississippi Pub. Service Comm'n.*, 418 So.2d 779 (Miss.1982). But see *People ex rel. Deukmejian v. Brown*, 29 Cal.3d 150, 624 P.2d 1206, 172 Cal.Rptr. 478 (1981); and *City of York v. Pennsylvania Pub. Util. Comm'n.*, 449 Pa. 136, 295 A.2d 825 (1972).

The Superior Court relied exclusively on *Deukmejian* in disqualifying the Attorney General from pursuing judicial review. The holding of the California Court is bluntly stated:

In short, the Attorney General cannot be compelled to represent state officers or agencies if he believes them to be acting contrary to law, and he

may withdraw from his statutorily imposed duty to act as their counsel, but he may not take a position adverse to those same clients.

624 P.2d at 1209, 172 Cal.Rptr. at 481. *Deukmejian* could be distinguished on the basis of the peculiar relationship between the attorney general and the governor under*1204 California law. Indeed the California Supreme Court specifically relied upon their peculiar law in rejecting the authority recited above. *See id.* at 1209, 172 Cal.Rptr. at 481. More importantly, however, we find the California rationale unpersuasive because it equates the Attorney General with a private lawyer and fails to reflect adequately the unique status of the Maine constitutional office.

[4] In sum, we conclude that when the Attorney General disagrees with a state agency, he is not disqualified from participating in a suit affecting the public interest merely because members of his staff had previously provided representation to the agency at the administrative stage of the proceedings. Other less drastic means of insuring effective representation for state officers and agencies exist. The abandonment of the public interest, as was ordered in this case, is not necessary. We endorse the practical resolution enunciated by the Supreme Court of Mississippi:

The attorney general has a large staff which can be assigned in such manner as to afford independent legal counsel and representation to the various agencies. The unique position of the attorney general requires that when his views differ from or he finds himself at odds with an agency, then he must allow the assigned counsel or specially appointed counsel to represent the agency unfettered and uninfluenced by the attorney general's personal opinion. If the public interest is involved, he may intervene to protect it.

Allain, 418 So.2d at 784. Because the Superintendent is now represented by private counsel, there is no ethical impediment to the legal action brought by the Attorney General.

The entry is:

The judgment entered in *Superintendent of Insurance v. Attorney General* is vacated and remanded for entry of judgment in favor of defendant.

The order striking the appearance of the Attorney General in *Brown v. Superintendent of Insurance* is vacated and the case is remanded for further proceedings consistent with the opinion herein.

The order dismissing *Attorney General v. Superintendent of Insurance* is vacated and the case is remanded for further proceedings consistent with the opinion herein.

All concurring.

Me., 1989.
Superintendent of Ins. v. Attorney General
558 A.2d 1197

END OF DOCUMENT

B. Program Description

Programs of the Office of Attorney General

Attorney General William J. Schneider is the chief executive of the Office of the Attorney General. He, along with Chief Deputy Attorney General Linda Pistner, handle significant policy issues, work with other staff on specific policy and legal issues, coordinate responses to requests for legal advice from the Executive and Legislative Branches, and supervise and coordinate the services provided by the Office to state government. Services to the Legislature and its members are coordinated by Martha Demeritt, Special Assistant & Legislative Liaison. Press and special projects are handled by Special Assistant Brenda Kielty.

The Office is organized into a number of operating divisions that carry out the Office's civil, criminal and investigative responsibilities. Each division is headed by a chief attorney or other professional.¹

The primary program responsibility of the Office is to provide advice to and defend the actions of state government, and enforce Maine law. Set forth below are descriptions of the various divisions, which are organized by the nature of the services they provide, followed by discussions of specific programs of the Office of the Attorney General. The District Attorneys' work is also addressed.

Administration Division

Division Profile: Janet Joyeux, Chief. This division has 7 positions: 1 Law Office Manager, 1 Human Resources Manager, 1 Accountant III, 3 Research Assistants (one assigned to accounting and two assigned to Information Services), and 1 Receptionist.

Division Highlights: This Division is responsible for three primary functions – human resources management, financial management and accounting and information services management.

In the Human Resources area, the Human Resources Manager handles all payroll functions for the Office of the Attorney General and the eight regional District Attorney's Offices. The Manager is responsible for all personnel matters, including recruitment, retention and discipline.

In the Financial Management and Accounting area, the staff are responsible for biennial budget preparation, annual work program preparation and management, accounts payable, accounts receivable, restitution payment management, special services contracts, out-of-state travel requests and grants management. In addition, the staff handles any miscellaneous needs of the office, such as, access security, office space allocation, telephone work orders, insurance portfolios and many other issues required to run an office.

In the Information Services area, the two staff works in conjunction with the Secretary of State's Office, with whom the Office of the Attorney General has a Memorandum of Agreement for the

¹ While the Chiefs have numerous administrative and supervisory responsibilities, all of them are practicing attorneys or other professionals. All of the Division Chiefs carry caseloads or regularly cover for their staff.

provision of Information Technology support services. Collectively, this group is responsible for the computer networks, servers and all hardware and software management and support.

Child Protective Division

Division Profile: Janice S. Stuver, Chief; 20 AAGs, or 17.5 full-time equivalents; shares 12 secretaries with the Child Support and Health and Human Services Divisions; 1/2 of a paralegal. The Division is based in Augusta and in three regional offices in Portland, Bangor, and Caribou.

The Child Protection Division represents the State in civil child abuse and neglect proceedings throughout Maine. In addition to litigating child protection cases in the 28 of Maine's 31 District Courts that currently handle child protection cases, the Division also represents the State in over 50 appeals of child protection decisions annually, and provides legal advice and training to the Child Welfare Division of the Office of Child and Family Services in the Department of Health and Human Services.

The Child Protection Division also provides legal training to Department of Health and Human Services (DHHS) caseworkers attending the Child Welfare Training Institute through the Muskie School.

Division Highlights: The Division has over 1300 open cases. On average our full-time attorneys carry caseloads of 85 cases each. Court appearances on these cases include child protection hearings, case managements, trial managements, and docket calls.

Conservatively estimating that each case involves 3.5 court appearances, the attorneys appear in court approximately 4600 times annually. A new case has approximately 5 court appearances per year and a case beyond the 1st year has approximately 2 court appearances per year.

Total number of AAGs working on child protection: 20 AAGs or 17.5 full-time equivalents

Total number of cases October 2011: 1328

Approximate number of court appearances per year: 4600

Number of court appearances per week (over 48 work weeks²): 96

Child Support Division

Division Profile: Debby L. Willis, Chief; 11 child support attorneys (7 full time, one half-time, and 3 split their time between child support and child protection, total 9 full time equivalent attorneys); 4 full time paralegals, plus one who splits her duties with the Child Protection Division; and two paralegal/secretary hybrids. The Child Support Division shares 12 secretaries with the two other Health and Human Services Divisions. The Division is based in Augusta and the three regional offices in Caribou, Bangor and Portland.

Division Highlights: The Child Support Division provides legal counsel and representation to the Department of Health and Human Services Division of Support Enforcement and Recovery. Representation is provided in cases in which parents are in receipt of public assistance, as well as

² Takes into account the time spent in training, as well as vacation and sick time.

in cases in which parents are not in receipt of public assistance and receive non-welfare services from the Division of Support Enforcement and Recovery. Parents and legal guardians may seek assistance from the State in establishing and collecting child support obligations and in establishing paternity for their children. The Division also provides representation to the Division of Support Enforcement and Recovery for non-Maine residents under the Uniform Interstate Family Support Act. In 2009 alone, the Division received 2,670 referrals from the Division of Support Enforcement and Recovery. The average full time attorney's case load is 177 open cases.

The Division's work is primarily civil in nature. Division attorneys appear daily in child support cases representing the Division of Support Enforcement and Recovery before the Family Division of the Maine District Court and in Probate Court proceedings. These include cases brought for the following:

1. To determine paternity and to establish and modify child support orders;
2. To enforce support obligations that are being ignored by an obligated parent, which can be either:
 - a. Action for civil contempt action where a parent's failure to pay is willful and they have the capacity to pay or to obtain employment so they can pay; parents are often ordered to seek work and report their efforts to the Division of Support Enforcement and Recovery on a weekly basis; or
 - b. Criminal nonsupport cases;
3. To review agency enforcement actions, such as license revocation, bank withholdings and seizure of property and other assets; and
4. To enforce employers' obligations to comply with judicial and administrative orders requiring them to deduct child support from an employee's earnings and for holders of obligated parents' property who fail to honor a child support lien.

In 2009 the Division sought and was awarded money judgments in court totaling over \$1.9 million to reimburse either the State for public assistance money expended, or custodial parents for past support owed. Additionally, the Division established new child support orders totaling over \$63,000 per week and obtained increases in existing orders totaling over \$19,000 per week.

The Division continues to encounter cases in which a party who is a legal parent of the child is asking the court to undo paternity on the basis of genetic testing that indicates the party is not the child's biological father. There is no statutory guidance if such cases are brought more than 60 days after the voluntary acknowledgment of paternity was signed or more than one year has passed since the court entered a judgment. These cases raise difficult issues of social policy, both in purely financial terms and more broadly in terms of the relationship that may have developed between the child and the man the child regarded as his or her father. These disestablishment cases are being decided one by one by district court judges with no legislative guidance.

Consumer Protection Division

Division Profile: Linda Conti, Chief; 3.5 AAGs; 2 paralegals; four assistant complaint examiners (2 full time and 2 part-time); and a senior legal secretary.

The Consumer Protection Division focuses on four substantive areas: 1) consumer, including enforcement of the Unfair Trade Practices Act (modeled on the Federal Trade Commission Act), the Mediation and Information Program; 2) antitrust enforcement of the Monopolies and Profiteering law (modeled on the federal Sherman Act) and of the state's merger statute; 3) oversight of public charities; and 4) tobacco enforcement.

Division Highlights:

Consumer Mediation The Mediation program conducts voluntary mediation via phone and mail to resolve disputes between consumers and businesses. The Assistant Complaint Examiners ("ACES") determine which consumer complaints are appropriate for mediation and train and supervise nearly 30 volunteers who mediate consumer complaints. These volunteers contributed 4,305 hours over the fiscal year 2010-2011. During that period the mediation program received 4,008 phone calls, 510 letters, 84 in person visits, 3,003 emails, and 41 online complaints from consumers. The volunteers mediated 951 claims with a 63% resolution rate resulting in the recovery of \$486,307.00 for Maine consumers.

Consumer Information: The Division also provides information on consumer issues and identity theft to the public. The ACEs provide information over the phone and on occasion by making presentations on various topics to the public. The Division maintains a large portion of the Attorney General's website content. In the past year there have been 123,000 visits to the consumer portion of our website. The Division also updates the Consumer Law Guide which is a comprehensive explanation of state and federal consumer laws affecting Maine residents. The Law Guide is available on the web site.

"Consumer Matters": The Division began taping a TV show, "Consumer Matters," in January of 2007 and we have just completed our 46th program. The program airs at least twice a week on cable television stations in the state and delivers an estimated audience of 900,000 viewers. Each program is 30 minutes long and has a question-and-answer format that covers topics of consumer interest through interviews with experts in various fields. Topics have included subjects such as manufactured housing, efficient home heating, deciphering telephone bills and new landlord/tenant laws. In addition to the featured topic, each 30-minute program includes a public service announcement by Attorney General William Schneider and a consumer question (and answer) of the day.

Recently, the Maine.gov website has begun posting the programs. Additionally, Time Warner has started to include the program in its "On Demand" portfolio. Both of these additions have greatly expanded the potential number of viewers and provided us with an extremely economic means of conveying consumer information.

Lemon Law Program: The Consumer Division administers the Lemon Law Arbitration Program which allows consumers with a severely defective new car to have their cases heard by a state

arbitrator, free of charge. In the past fiscal year the Lemon Law program sent out 38 applications for arbitration of which 9 were accepted into the program for arbitration. Of these, one vehicle was declared a lemon and one case was settled prior to the arbitration hearing which resulted in a recovery of \$47,600.70.

Consumer enforcement: Efforts have included *State v. Price-Rite Fuel, et al.* and *State v. Credit Solutions of America, et al.* In *State v. Price Rite Fuel, et al.*, the Maine Law Court upheld the trial court's findings that three oil companies and their owner were liable for restitution to consumers and civil penalties for selling prepaid fuel contracts and not delivering the fuel or obtaining any kind of security to ensure the future delivery of the prepaid fuel. *State v. Credit Solutions, et al.* settled after two days of trial, with the company and its owner agreeing to cease providing debt settlement services in Maine and to pay the State \$150,000.

Antitrust: Highlights include reviewing hospital mergers and negotiating consent decrees that ameliorate any anticompetitive effects from the mergers. One case, *Attorney General v. MaineHealth*, has gone to the Law Court for a determination of whether an third party can intervene in an Attorney General filed complaint and consent decree. We also regularly participate in multistate and state-federal investigations and occasional litigation with other state antitrust enforcers, as well as the Federal Trade Commission (FTC) and the United States Department of Justice (USDOJ). In the last few years we have brought investigations in diverse industries such as fisheries, technology and pharmaceuticals.

Charities oversight: The Attorney General is charged by law with ensuring that charitable assets, whether held in trust or by a nonprofit corporation, are preserved and applied to charitable purposes. In the last year the Attorney General has been party to several court actions seeking to remove obsolete restrictions on charitable trusts and has regularly advised trustees on applicable legal requirements. Three of the Division attorneys regularly provide information to lawyers, and members and directors of nonprofit organizations regarding the scope of fiduciary duties and other legal requirements under laws such as the Uniform Trust Code and the Uniform Prudent Management of Institutional Funds Act. One of these attorneys handles all calls from law enforcement regarding compliance with the Law Enforcement Solicitations Act.

Tobacco enforcement: The time of one of the division attorneys and .5 of a paralegal is devoted entirely to tobacco work. This work includes administering and enforcing the state's rights and responsibilities under the tobacco Master Settlement Agreement (MSA). The attorney leads litigation to enforce the tobacco Master Settlement Agreement's public health provisions and to resolve disputes about the annual payments owed by the tobacco companies. In addition, the division handles the administration and enforcement of the Tobacco Manufacturers Act and the Tobacco Product Manufacturers Act, which require all tobacco product manufacturers to either join the MSA or to place funds into a qualified escrow account for cigarettes and roll-your-own tobacco, as well as file a certification to be listed on Maine's tobacco products directory. No cigarettes or roll-your-own tobacco may be legally sold in the State unless the manufacturer and distributors comply with the requirements of these two statutes.

Maine is currently involved in an arbitration proceeding under the MSA involving all the manufacturers ("Participating Manufacturers"), States and U.S. Territories who participated in the settlement, to resolve a dispute over who is entitled to roughly \$1.12 billion related to the Non-Participating Manufacturer Adjustment provided for by the MSA for the Annual Payment

due April 15, 2004. Most of the Participating Manufacturers withheld money or placed money into a Disputed Payments Account claiming that they were entitled to the Adjustment, or offset, to their 2004 annual payment. This is the first time that this type of dispute under the MSA has been arbitrated.

Because the public health effects of tobacco use are so dire, the Consumer Protection Division also works with the Health and Human Services Division and the Maine State Fire Marshal to ensure that all entities selling tobacco products to Maine consumers comply with the stringent requirements of the Retail Tobacco Sales Act.

Criminal Division

Division Profile: William Stokes, Chief; fifteen AAG's; two program directors; two victim witness advocates; one paralegal; three senior legal secretaries and one account clerk. The Division is responsible for all homicide prosecutions in the State of Maine (with the exception of vehicular manslaughter cases); for providing significant support to the prosecution of drug-related crimes through six AAG's specializing in this area; interstate extraditions; and handling appeals in criminal cases arising from the Criminal Division and as needed and as requested by the eight elected District Attorneys. The Criminal Division also advises the Bureaus within the Department of Public Safety (DPS), including the Maine Criminal Justice Academy (MCJA), Maine Emergency Medical Services (MEMS), Maine State Police (MSP), State Fire Marshal's Office, Emergency Services Communications Bureau and the Gambling Control Board. In addition, the two AAG's assigned to provide legal advice to the Department of Corrections have been assigned to the Criminal Division. The Victims' Compensation Program and the SAFE (Sexual Assault Forensic Examiner) Program are also within the Criminal Division.

In November 2011, the Financial Crimes and Civil Rights Division was merged into the Criminal Division, but since it was separate during the period covered by our report, that division's program is described at the end of this section.

Division Highlights:

Homicides: In 2010, a total of sixteen homicide cases were resolved, either by trial or plea. This is an average of one homicide case being resolved approximately every 3.5 weeks. On average, the length of time from indictment to trial is nine to twelve months. Through October 2011, fourteen homicides have been resolved. The Criminal Division has worked cooperatively with the Chief Justice of the Superior Court to move homicide cases expeditiously through the criminal justice process. A single prosecutor and a single Superior Court Justice are assigned to a homicide case as soon as possible so that the matter can be handled with the least amount of duplicative effort.

Appeals: The Division's attorneys also handle a number of appeals from defendants in both state and federal court. In 2010, 42 direct appeals, state post-conviction review petitions and federal habeas corpus petitions were filed in cases handled by the Criminal Division or the Financial Crimes Division. During the same time period, 38 cases were disposed of by the attorneys of these two Divisions.

Drug Prosecutions: The Multi-Jurisdictional Drug Prosecution Support Program within the Criminal Division employs six assistant attorneys general as drug prosecutors and one legal

secretary. Of the six assistant attorneys general, one serves as Drug Prosecution Coordinator and five serve as Drug Task Force Attorneys. These five attorneys are assigned in District Attorney's offices around the State. The six attorneys closed a historic high total of 870 cases in 2010. Of the 870 cases, 86.3% were felony offenses. Prescription drug cases continue to grow steadily in number, rising from 39% of the caseload in 2009 to 47.8% of the caseload in 2010. Additionally, the rapid escalation in the incidence of so-called "bath salts" cases in 2011 has presented serious public safety problems.

Financial Crimes & Civil Rights (part of the Criminal Division, effective November 2011)

Division Profile: Leanne Robbin, Chief; six AAGs; two research assistants, two legal secretaries, an auditor and four detectives.

The Financial Crimes and Civil Rights Division oversees the prosecution of white collar, financial crimes and frauds against the State, including Election Law violations, welfare fraud, tax evasion, computer crimes, the Healthcare Crimes Unit, and securities violations.

Division Highlights: The Healthcare Crimes Unit (HCU) is the State's designated Medicaid Fraud Control Unit, and brings cases involving MaineCare provider fraud, as well as abuse and neglect of individuals in MaineCare facilities. The most significant accomplishment in the last year was the prosecution of Dawn Solomon, who bilked MaineCare of at least \$4 million in the operation of Living Independence Network Corporation or LINC. Pursuant to a cap plea, Solomon was sentenced to eight years, all but three and a half years suspended, and three years of probation and ordered to pay \$4 million in restitution. The HCU obtained five other criminal convictions, including a conviction for Gross Sexual Assault against a MaineCare provider having sex with a mentally challenged client, drug diversion crimes by health care workers and theft arising from fraudulent billings by an unlicensed chiropractor. The HCU recovered \$15,895,739.17 for the State from civil global settlements, and screened 1,603 referrals from agencies and health care facilities.

The Division's securities fraud prosecutor obtained felony convictions against four defendants who defrauded investors, resulting in orders of restitution totaling approximately \$429,000. One of the sentences imposed after a jury trial (Eric Murphy) resulted in the longest sentence ever in a State securities prosecution (nine years of incarceration, all but five years suspended). The securities prosecutor also settled two civil securities fraud suits for a total of approximately \$2,020,000 in restitution for investors, and negotiated a pre-litigation settlement with a broker dealer firm that resulted in the payment of \$2,000,000 in restitution to a Maine institutional investor. He also obtained six fraud indictments and brought five administrative actions against securities licenses.

Our criminal tax prosecutor initiated 42 new criminal tax cases this year (up from 37 last year)—26 felonies and 16 misdemeanor cases. He resolved 25 pending cases through conviction, with all but three resulting in a period of incarceration ranging from seven days to nine months. The most significant cases were the following: (1) Brian Bartley, owner of Bartley's Dockside Restaurant in Kennebunk, was sentenced to three years, all but nine months suspended, and restitution of \$87,365, for his theft of sales tax and unemployment benefits, as well as tax evasion; (2) Presque Isle attorney Alan Harding was sentenced to 120 days, all but 10 days suspended, after paying the full restitution of \$119,000 for his failure to pay income taxes from

2004 through 2009; and (3) Philip Sewall, former president of fuel company M.W. Sewall, will disgorge \$275,000 as a result of his decision not to have the company pay fuel and sales taxes for a period of months; the company's bankruptcy estate will pay an additional \$1.03 million as part of the global resolution. For the fiscal year ending July, 2011, Maine Revenue Services (MRS) collected approximately \$419,000 in criminal restitution (up from \$365,000 in the previous year), excluding the Sewall restitution.

A new welfare fraud prosecutor was hired in September, 2010, and he is working with DHHS staff and the Fraud Working Group to improve the prevention, detection and referral of fraud. In 2010, there were only 10 referrals, with six indictments and eight convictions. In 2011, there have been 23 referrals to date, with 11 indictments and two convictions. The sentences obtained have been more significant than in the past, with Katherine Schidzig being sentenced to three years, all but one year suspended, for her theft of \$24,000 in welfare benefits. Restitution ordered in 2010 was \$92,339.49 and in 2011 is \$49,492.

In December, 2009, the Office used a federal ARRA grant to hire a computer crimes prosecutor to provide much needed support for the Maine State Police Computer Crimes Unit. Since the date she began work, the computer crimes prosecutor has issued 771 grand jury subpoenas, reviewed 67 search warrants and served as the primary prosecutor on three criminal cases, in which she secured convictions. Since February, 2010, she has directly assisted the Computer Crimes Unit in opening approximately 266 peer to peer investigations, completing 149 "knock and talk" investigations, executing 15 search warrants and making 14 arrests. She has also been instrumental in the enactment of new legislation and rules relating to computer crimes, as well as in educating other prosecutors and investigators in the preservation and presentation of digital evidence.

In the area of election matters, the Division prosecuted one dual voter case, one case of mishandling absentee ballots by a town clerk and four cases under the Clean Elections Act. In addition, it took on complex and conflict financial cases, including embezzlement by former Passamaquoddy Chief of Police Joseph Barnes and a theft of over \$400,000 by a Tammy Barker, who sold mobile homes from the Brunswick Naval Air Station on consignment. The Division has also brought criminal prosecutions based upon the referral from other agencies, including theft for the fraudulent redemption of out of state beverage containers in violation of the Bottle Bill, prosecutions for the unauthorized practice of law by disbarred attorneys, theft of hunting and fishing license fees by a sales agent of IF&W licenses and theft of equipment and supplies by a former Department of Transportation (DOT) employee.

Civil Rights: The Division also directs enforcement actions under the Maine Civil Rights Act and is responsible for the administration of the Civil Rights Team Project (CRTP). In the area of civil rights enforcement, the Office received 39 complaints in 2011, with a majority of the complaints being in the areas of race (17) and sexual orientation (13). The Office filed civil complaints for injunctive relief against seven defendants and prosecuted an eighth defendant for a criminal violation of a previous civil rights injunction. In the criminal case, the defendant, who assaulted an African American man, was sentenced to nine months in jail.

Health and Human Services Division

Division Profile: Doris A. Harnett, Chief; ten AAGs;³ one RA;⁴ one Secretary Specialist; one Secretary Associate-Legal and one Secretary-Legal. The Division provides legal counsel and representation to the Department of Health and Human Services (DHHS).

Division Highlights: The Health and Human Services Division represents DHHS in a variety of matters that protect the public interest. In March 2010, the United States District Court terminated the *Community Consent Decree*, the successor to the original *Pineland Consent Decree* executed in September 1994. The Court found that DHHS had substantially complied with the Decree and could be released from Court supervision and the Decree terminated. One of the Division's attorneys continues to invest a significant amount of time in the *AMHI Consent Decree* case (pending since 1980). The Division also represents DHHS on Medicaid matters and the complex litigation that exists within this area (such as the *Van Meter* federal class action lawsuit, now settled). Medicaid matters include state audits, provider recoupments, estate recovery actions, and rebate and consumer issues related to the pharmacy benefit. The Division is currently advising DHHS regarding three ongoing complex OIG audits of Medicaid programs.

While the Medicaid and class action work is significant, the Division's attorneys are also involved in a wide range of additional legal work. This additional work includes receivership proceedings, as well as licensing and enforcement actions involving hospitals, assisted living facilities, foster homes, day care centers and eating and lodging facilities. The Division also advises DHHS on the Maine Medical Use of Marijuana Act, Sentinel Event Reporting and HealthInfoNet, Maine's statewide health information exchange. The Division provides representation to DHHS in public guardianship and conservatorship proceedings, involuntary mental health commitment hearings, and progressive treatment program cases. Public health work involves the Drinking Water Program, the Lead Poisoning Program, HIPAA compliance, Infectious Disease Control Program, the Maine Water Well Drillers Commission, Maine Vaccine Board and the Maine Health Data Organization. The Division's attorneys invest a considerable amount of time reviewing the rules proposed by DHHS, as well as requests for proposal and contracts. The Division's attorneys also provide representation to DHHS in numerous administrative hearings, as well as litigation matters in state and federal courts.

Investigation Division

Division Profile: Brian MacMaster, Chief; six investigators (includes 2 vacancies in the process of being filled), one legal secretary. The Investigation Division carries out a wide variety of both criminal and civil investigations, and serves as a resource for specialized assistance and advice for other agencies with respect to investigations. The Division carries out statutorily-required investigations of fraud against the State, and the use of deadly force by police officers. The Division is the primary investigative agency in the State for any sort of public corruption. The Division provides investigative services for other divisions of the Attorney General's Office, several state licensing boards, and the eight District Attorneys in the State when the need arises.

³ One .50 AAG position is currently vacant.

⁴ One 1.0 RA position is currently vacant and frozen until 7/1/13.

In calendar year 2010, the Division conducted 101 full-scale investigations and handled 1,080 other complaints. Members of the Division are often called upon to provide specialized training to other members of Maine's law enforcement community, including police chiefs and sheriffs. The Division Chief serves as the Attorney General's liaison with the State's law enforcement community.

Litigation Division

Division Profile: Paul Stern, Chief; 13 AAGs; two research assistants and three senior legal secretaries. The Litigation Division has a wide variety of responsibilities, which can be roughly divided into three parts:

General Civil Litigation: This group is responsible when the State or its officials are sued for monetary damages under State and Federal law, and when they are sued in civil rights actions including employment related claims. This group is also generally responsible when a suit is filed challenging the constitutionality of a Maine statute or is particularly complex, and often works with attorneys in other divisions. This group also deals with quirky matters, such as boundary disputes with other states, and attempting to recover an original copy of the Declaration of Independence. It oversees civil appeals, sometimes assists with criminal appeals, and serves as a resource for litigation-related issues within the Office. This group, in addition, has expertise in issues regarding Maine's recognized Indian Tribes.

Tax Unit: Generally, the tax unit handles all civil litigation and appeals involving Maine Revenue Services, including bankruptcy and collection work, and provides advice to the agency. The group brings in more revenues than it costs the agency to fund them.

General Government: This group provides legal advice and representation in administrative and judicial proceedings for the Department of Education, the Commission on Governmental Ethics and Election Practices, the Bureau of Corporations, election matters within the Department of the Secretary of State, the Department of Labor, the Department of Defense, and the Department of Administrative and Financial Services. This group is actively engaged in matters relating to child labor laws, bankruptcy, unemployment compensation, payment of wages, state and school construction contracts, state leases, the Maine Clean Election Act, election recounts, teacher certification, special education and collections.

Division Highlights: We have spent considerable time working with the Criminal Division defending Maine's Sex Offender Registration and Notification Act against numerous constitutional challenges. We have been working with the Consumer Division on a complex, 40+ state arbitration which will determine if the payments to Maine under the Tobacco Master Settlement Agreement will be dramatically reduced. We were involved in the recent reapportionment litigation and process that resulted in the redrawing of the line between Maine's two Congressional districts. The office appeared in *In re FairPoint Communications, Inc.* (Bankruptcy, SDNY), in which FairPoint agreed to pay the State \$831,830.05 and to file and pay the disputed Service Provider Tax on an ongoing basis.

Office of the Chief Medical Examiner

Division Profile: Margaret Greenwald, MD, Chief Medical Examiner; Michael Ferenc, MD, Deputy Chief Medical Examiner; one administrator; one investigator; one medical secretary; one technical secretary; one clerk/typist III, one laboratory supervisor, and one autopsy supervisor. The office is responsible for death investigation and certification of death whenever a specific death falls within the jurisdiction of the Office of Chief Medical Examiner (OCME) as determined by The Medical Examiner Act, Title 22, Chapter 711.

Cases Investigated: The total number of deaths investigated continues to gradually increase. In order to stay within the budget, a number of changes have been made to the statutory duties of the OCME. First, in 2003 an amendment to 22 MRSA §3025(1-A)(B) created an exception to the general rule that any death related to an injury became a case. The exception was specific to the elderly with limb or axial fractures (excluding the head) and required a previous hospitalization for that injury. This allows the office to review all fractures in the elderly but to release them to the treating physician for certification if the fracture appears to be related to osteoporosis and is not associated with any suspicious circumstances.

YEAR	2009	2010
TOTAL CASES INVEST.	2285	2400
AUTOPSIES	315	315
EXAM ONLY	753	708
FRAC. RELATED DEATHS	125	133

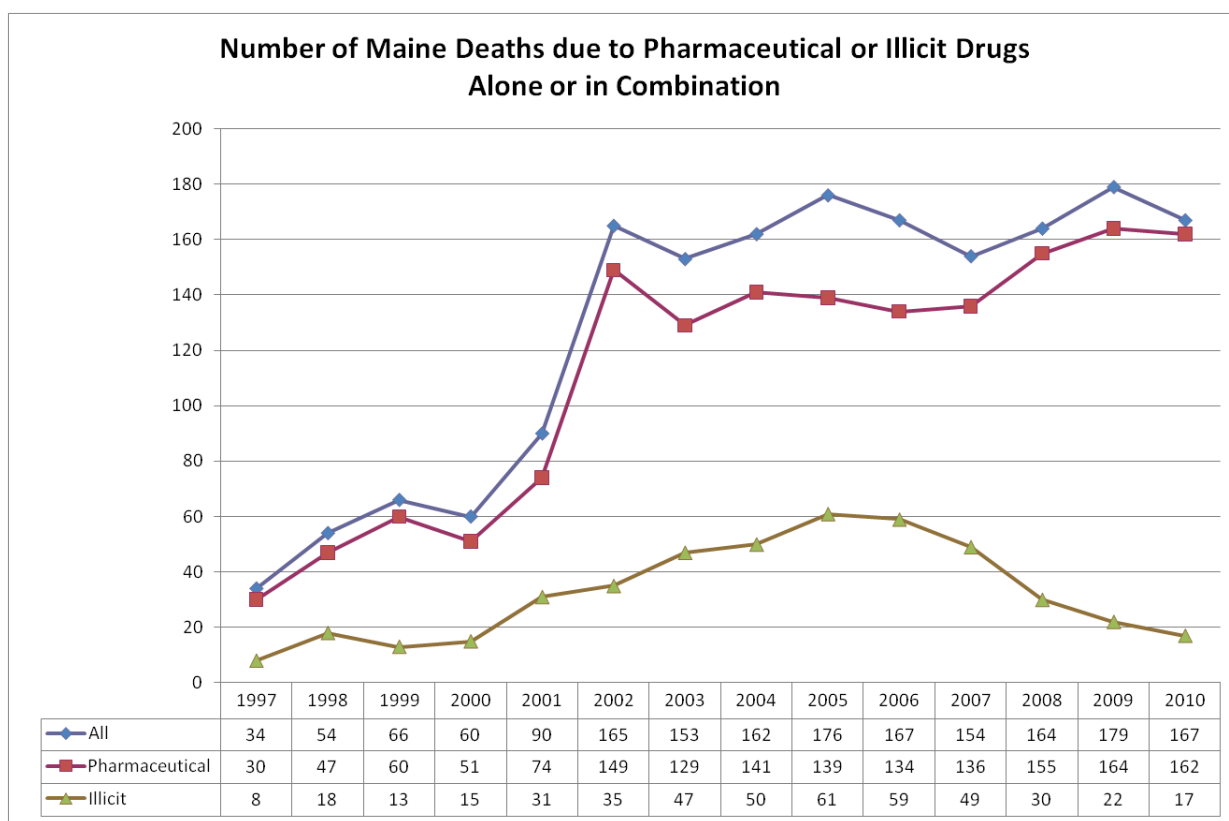
In the most recent legislative session, 22 MRSA §3028(6) was amended to allow the office to complete a report and certify a death without viewing the body. It will be used primarily in cases where the person has been hospitalized and all injuries have been well documented (*e.g.*, a person who has been in a coma for months or years after a motor vehicle accident). We do not yet have enough experience to evaluate this amendment.

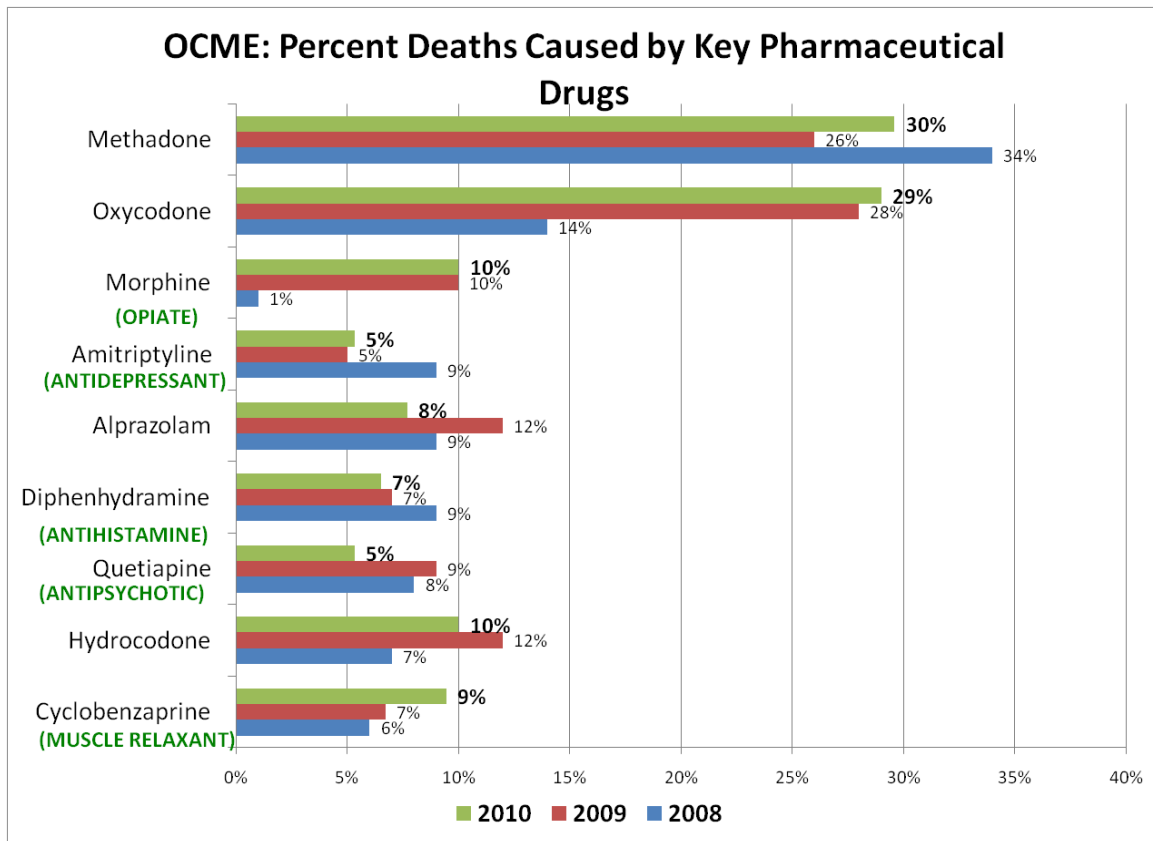
Investigations include extensive interactions with law enforcement officers, scene visits, review of medical records and telephone interviews with family and physicians, as well as the expected external examination, autopsy, toxicology and other laboratory tests. Unfortunately, scene visits are difficult to arrange in non-suspicious deaths. However, in any suspicious death or homicide, Dr. Ferenc or Dr. Greenwald, along with Drs. Edward David or Fred Jordan (who function as volunteer Deputy Chief Medical Examiners), Dr. Kristin Sweeney who was previous Deputy Chief Medical Examiner in Maine or David King, the new OCME Investigator attend the scene to assist in the initial investigation. Of the 57 cases certified as homicides in 2009 and 2010, 17 died in hospitals. Of the remaining 40 cases, 37 received a scene visit. In 2 cases, the deaths occurred in vehicles that were transported intact to the Crime Laboratory to maintain better evidence control.

In 2007, an Investigator position was added to the staff and is a valuable asset for coordinating telephone investigations with police agencies as well as providing for examinations in areas not

well served by other volunteer medical examiners. During the last 2 years, there has been staff turnover, subsequent short staffing, and pressure on remaining staff which has led to even longer delays in finishing cases. The Paul Coverdell Grant has provided some federal money to allow the office to contract with Drs. Jordan and Sweeney (both board certified Forensic Pathologists) for an additional ¼ FTE pathologist to help.

Dr. Ferenc continues to assist Maine State Police with interpretation of scene evidence particularly with blood spatter patterns. Dr. Greenwald continues to work with Dr. Marcella Sorg to provide statistics on the overwhelming problem of prescription drug abuse in Maine in an effort to provide legislators as well as other state and federal agencies with the data to be used in policy decisions related to this problem. Two charts on the following page are included to show the data that has been so important. Individual decedents often have more than one drug present attributed to the cause of death. Thus, numbers and percentages on the charts will be greater than 100%.





The OCME has developed uniform statewide protocols for death investigations that meet national standards and trains medical examiners and other death investigators to use the protocols consistently. The purpose of these efforts is to improve the quality of the statewide medical examiner system to meet national standards. The following chart shows some overall numbers and compares them to the national averages.

	2009 Actual	2010 Actual	2011 Estimated
# of reported deaths investigated	2285	2400	2146
# of reported deaths autopsied	315	315	324
Avg # months for processing autopsies	3.0	3.0	3.0
% deaths that become OCME cases compared Nat'l Standard (20%)	8.9%	8.5%	9.5%
% ME cases autopsied Compared Nat'l Std. (40%)	29.5%	30.8%	28.4%

Natural Resources Division

Division Profile: Jerry Reid, Chief; eight AAGs; one senior legal secretary. The Natural Resources Division provides legal services to the Department of Environmental Protection (DEP), the Board of Environmental Protection (BEP), the Department of Conservation (including the Bureau of Parks and Lands, the Department of Inland Fisheries and Wildlife (IFW), the Land Use Regulation Commission (LURC), the Maine Forest Service and the Maine Geological Survey), the Department of Agriculture (including the Maine Milk Commission, the Board of Pesticide Control, the Maine Potato Board and the Animal Welfare Program), the Department of Marine Resources, the Land for Maine's Future Program, the Board of Underground Tank Installers, the Oil Fund Insurance Review Board, the Saco River Corridor Commission, the State's Soil and Water Conservation Commissions, and the Office of Energy Independence and Security's Interagency Review Panel, which was recently created to oversee the use of State-owned energy corridors.

Division Highlights: The Division's attorneys have been actively advising and representing state agencies in connection with a variety of complex and controversial matters, during both the administrative decision-making process, and in the defense of those decisions on judicial appeal. These include DEP's and LURC's recent permitting of the following grid-scale wind energy projects: Record Hill (Oxford County), Stetson I and Stetson II (Washington County), Oakfield (Aroostook County), Rollins Mountain (Penobscot County), and Kibby I and Kibby II (Franklin County). Six out of seven of these permitting decisions were appealed to the Law Court. The Division is also defending Superior Court challenges to DEP's issuance of an order addressing noise complaints at the Fox Island Wind Project on Vinyl Haven Island, and to the issuance of a permit for the Oxford County Casino Project. Attorneys from the Division advised the BEP and represented the DEP Commissioner in a two-week adversarial hearing concerning remediation of mercury contamination at the former HoltraChem site in Orrington, and are currently defending the BEP's decision in that matter on appeal to Superior Court. Attorneys from the Division advised LURC during a four-week adversarial hearing regarding Plum Creek's proposed Concept Plan, and are now defending LURC's decision on appeal to the Law Court. Attorneys from the Division represented DEP in an enforcement action against Chevron for oil discharges to the Penobscot River from a terminal in Hampden, resulting in a \$900,000 civil penalty, and are handling other enforcement actions under the State's land use, water quality and solid waste laws. Attorneys from the Division advised the Commissioner of IF&W and represented DEP during a lengthy adversarial hearing concerning fish passage at the Cumberland Mills Dam on the Presumpscot River, the result of which will re-open the length of the River to anadromous fish runs for the first time in more than 100 years.

Professional and Financial Regulation

Division Profile: Andrew Black, Chief; nine AAGs; and two secretaries associate legal. The Division provides legal counsel and representation to the Department of Professional and Financial Regulation (PFR), as well as the Maine Public Employees Retirement System (MePERS), Maine Harness Racing Commission, Bureau of Alcoholic Beverages & Lottery Operation, State Board of Property Tax Review, and the Liquor Licensing and Compliance Division of the Department of Public Safety.

The Division provides legal advice to all the PFR bureaus and offices.⁵ This includes the Office of Professional and Occupational Regulation which consists of 37 professional licensing boards, commissions, and registration programs dedicated to the protection of the public through licensure, inspection, enforcement/complaint handling, and discipline of its over 100,000 active licensees. The Division attorneys, in addition to providing legal advice, actively assist in investigations, prosecute disciplinary actions before the boards, defend the decisions of the boards on appeal in court, and defend the agencies in state or federal court.

Division Highlights: The most high-profile recent case was *Anthem v. Superintendent of Insurance*, 2011 ME 48, in which Anthem on appeal challenged the rate specified by the Superintendent for Anthem's 2009 rates. This case raised regulatory issues of national significance and was watched closely by the industry and regulators. The Division's attorneys successfully defended the Superintendent's decision at every stage of the litigation and prevailed in the Law Court. Anthem challenged subsequent decisions of the Superintendent for years 2010 and 2011. To date, the Division's attorneys have successfully defended these decisions at every stage of the litigation, which will be addressed by the Law Court in the near future.

The majority of the Division's work has pertained to the investigation, resolution, and prosecution of the many complaints filed against persons licensed by the Division's various clients. In 2010, the Division's clients received a total of approximately 1500 new complaints filed against its licensees and are on track to receive a similar number in 2011. Although the number of complaints has remained steady for most of these clients, one important exception is the Board of Nursing, which has seen a significant increase in its already high volume of cases and a corresponding increase in its need for legal services.

A substantial portion of the Division's litigation work remains the defense of MePERS benefit denials, although the past year saw a spike in the number of appeals from disciplinary adjudications before the Superintendent of Insurance. A recently filed case of significance that the Division's attorneys are currently litigating is the federal case *Maine Educational Association Benefits Trust v. Superintendent of Insurance*, which challenges the legality of the recently enacted law that requires health insurance companies to disclose loss experience data to school districts. This information would, among other things, allow school districts to seek coverage for their employees from a plan other than the teacher's union trust.

⁵ PFR regulates financial services, including insurance companies, state-chartered banks and credit unions, investment advisors, and mortgage companies. PFR also regulates numerous professions and occupations. PFR includes the Office of Professional and Occupational Regulation, Bureau of Financial Institutions, Office of Securities, Bureau of Consumer Credit Regulation, and Bureau of Insurance.

Programs Administered by the Office of the Attorney General

The Office of the Attorney General houses within it a number of programs authorized by the Legislature. These programs are models of both efficiency and effectiveness. They are:

- Juvenile Tobacco Enforcement Program
- Victims' Compensation Program
- Sexual Assault Forensic Examiner (SAFE) Program
- Civil Rights Team Project
- Collections Program

Tobacco Enforcement Program

Program Profile: Paul Gauvreau, Director; one legal secretary; and one secretary specialist. The Tobacco Enforcement Program is responsible for oversight of enforcement of all tobacco related statutes in Title 22 representing the Department of Health and Human Services (DHHS). These include laws on retail tobacco sales, workplace smoking and public smoking. The Program coordinates with the Office of Substance Abuse, the Single State Agency (SSA) designated to report compliance under the Synar program to the US DHHS, Substance Abuse and Mental Health Services Administration (SAMSHA) Center for Substance Abuse Prevention (CSAP). The Program supports the DHHS contract with the U. S. Food and Drug Administration to enforce provisions of the Tobacco Control Act as they apply to tobacco retailers. The Program advises the DHHS Health Inspection Program regarding retail tobacco sales licensing and supports the Healthy Maine Partnerships initiatives to reduce the incidence of underage use of tobacco products in Maine.

Maine Victims' Compensation Program

Program Profile: Deborah Shaw Rice, Director; one Paralegal; and one Accounting Associate. The Maine Victims' Compensation Program assists innocent victims of violent crime by reimbursing them to a maximum of \$15,000 for the out-of-pocket costs or losses they incur when they suffer physical and emotional trauma as a result of criminal victimization. The aftermath of a violent crime may leave victims and their families physically and emotionally overwhelmed, but each personal loss carries a financial loss as well. In recognition of the financial hardship crime victims often suffer, the Maine Legislature in the spring of 1992 created the Victims' Compensation Fund and Victims' Compensation Board. The Board is an independent board comprised of three members drawn from Maine's legal, medical and victim services communities and decides claims to be paid from the Fund. The Board is supported by the Program staff, who are part of the Criminal Division.

In 2000, the Legislature made the Victims' Compensation Program responsible for developing and implementing the Forensic Payment Protocol, under which the Program now makes direct payments to health care facilities for performing sexual assault forensic examinations. This protocol has rapidly grown in cost and now severely strains the ability of the Victims' Compensation Fund to pay for it.

Outreach: The Victims' Compensation Program works closely with district attorneys, victim witness advocates, the Department of Correction, advocates from domestic violence and sexual assault response agencies, hospital staff, and other professionals to reach and assist victims of violent crime. The Program provides training to allied professionals upon request. The Director of the Program is a member of the core committee which developed and now presents an annual Victim Assistance Academy to train advocates for victim services. The Director also serves as a member of the Tri-State Consortium (Maine, NH, and Vermont), which annually organizes and presents an advanced advocacy training conference. The Program is a member of the National Association of Crime Victim Compensation Boards, for which the Director is the immediate past president.

Funding: Monies for victim awards, forensic payments, and program administration come from the Victims' Compensation Fund. Funds for the Victims' Compensation Fund come from assessments levied against criminal offenders: \$25.00 for murder, Class A, B and C crimes, and \$10.00 for Class D and E crimes. No tax dollars fund either the administration of the Program or the payments of awards. Additionally, if a victim's award made from the Fund is duplicated by restitution or from recovery in a civil action or insurance settlement, the law requires reimbursement of the Fund. Staff members pursue restitution awards and recovery working with the courts, the district attorneys, and the Department of Corrections. Finally, the Program is eligible for and receives some federal matching monies, which come from federal criminal fines and penalties rather than tax dollars. The state receives an annual grant from the federal Office for Victims of Crime based on the amount paid in state funds in previous years.

Program payments: During State Fiscal Year 2011, the Program paid out \$470,813.62 on claims for victims who filed application claims and another \$192,828.25 for payments directly to hospitals for sexual assault forensic examinations, for a total of \$663,641.87 in payments for 448 violent crime victims and their families. The average payment on an application case was \$2531.26. The average forensic examination payment was \$730.41. Ninety three percent of the Board's application decisions were favorable.

Sexual Assault Forensic Examiner Program

Program Profile: Polly Campbell, Program Director. The Sexual Assault Forensic Examiner (SAFE) Program began in 1997 to better meet the medical, psychological and emotional needs of sexual assault patients, and for timely and accurate collection of forensic evidence to assist in the prosecution of sexual assault crimes. The Program provides training and technical assistance for health care providers, primarily Registered Nurses, in the care of patients who have suffered the trauma of sexual assault, in the use of the Maine sex crimes kit for collection of evidence, and in preparation for court testimony. This national model utilizes an interdisciplinary, community-based approach for the dignified and compassionate care and treatment of sexual assault survivors.

Health care providers are often the first responders for survivors of sexual assault. Because of the time needed to assess and treat injuries and collect forensic evidence, it is cost effective to have a cadre of Sexual Assault Forensic Examiners on call to provide this care. By ensuring that trained professionals are available to perform the medical-forensic examination, the waiting

period to receive care is minimized, trauma from the assault is reduced, the needs of the victim are attended to, and evidence is collected in a manner that meets national and state standards and promotes successful prosecution.

The SAFE Program began in 1997 through the efforts of the Maine Coalition Against Sexual Assault (MeCASA). Administration of the Program was moved to the Office of the Attorney General (Title 5, Chapter 316B, § 3360-N, O, P) in 2001. The program developed and issued guidelines for the care of the sexual assault patient across the lifespan in 2010, and has standards for state certification of SAFEs.

Program Goals:

- Build capacity by increasing the number of Sexual Assault Forensic Examiners across the state;
- Provide ongoing training opportunities to build skills and strengthen competency;
- Expand the role of the SAFE to include care of pediatric patients as well as state certification of that practice;
- Assist hospitals with regionalization efforts so that SAFEs can practice in more than one hospital, thus enhancing the probability that a patient will receive care by a SAFE.

Training and Program Activities:

- Sexual Assault Forensic Examiner Training (adult/adolescent). Five days of didactic content and one clinical day of training; held two to three times each year.
- Pediatric SAFE Training. Four days; offered annually.
- Sexual Assault Criminal Mock Trial. Two days; held annually in different parts of the state.
- Medical/Forensic Examination Simulation Training. Offered in various locations across the state.
- Update and Review Training. Two days of didactic content and one day of clinical simulation work. Held annually.
- Experiential Testimony Training. Eight, full day trainings across the state to provide SAFEs the opportunity to testify in a safe environment.
- Monthly case/peer review through webinar with Dr. Larry Ricci, Spurwink Child Abuse Clinic.
- Quarterly, full day meetings with SAFEs. Held in Augusta with ITV sites in Presque Isle, Portland and Bangor. Three hour educational session on various topics related to practice.
- Many hospital based, in-service offerings regarding care of the sexual assault patient. This promotes recruitment of new SAFEs and increases competence and confidence for emergency department health care providers who must care for this patient population.
- The Program Director provides information and education at community, health care, and criminal justice forums.

The Program Director works closely with the Sexual Assault Response Team (SART) Coordinators and SART Teams of the nine member centers of the Maine Coalition Against

Sexual Assault (MeCASA), as well as with MeCASA staff. The director also sits on the state's Domestic Violence Homicide Review Panel; Elder Death and Abuse Response Team; the Commission of Domestic and Sexual Abuse subcommittees on domestic violence risk assessment, and strangulation; the Androscoggin County Child Advocacy Center Multidisciplinary Team; the Kennebec County Child Advocacy Center planning committee; and is 2012 President –elect of the International Association of Forensic Nurses.

Civil Rights Team Project

The CRTP currently has student civil rights teams in approximately 200 schools throughout Maine. A few years ago, in order to cut costs and increase efficiency and accountability, the five regional administrators who acted as liaisons between the schools and the OAG were replaced by a single full time employee, former teacher Brandon Baldwin. Brandon has been extremely successful in improving the trainings for advisors and students and giving them the tools to become effective teams. He continues to publish the *Torch*, a bimonthly newsletter for faculty advisors and updates faculty advisors regularly on civil rights issues.

Collections Program

Program Profile: Betsy Andrews, Director; and one part time secretary. The Collections Program represents state agencies in District Court to collect money judgments, including restitution, fines, penalties, and costs; delinquent unemployment contributions and income tax; and MaineCare recoupments and estate recovery monies. We carry out asset searches, file liens, serve writs of execution, occasionally seize property, and collaborate with AAGs in collection matters in other courts.

Agencies referring cases for collection include Agriculture, Department of Administrative and Financial Services (DAFS), DEP, DHHS, Department of Labor (DOL), Ethics Commission, IF&W, Maine Human Rights Commission (MHRC), MRS, Professional and Financial Regulation (PFR), Public Utilities Commission (PUC), Workers Compensation Board, and the Attorney General's Consumer Protection Division. MRS anticipates a large increase in referrals over the next few months.

During the past year, eighty-five new cases totaling \$1,385,878 were referred to the program. Forty disclosure hearings were held in district courts throughout the state, over 100 liens were filed with the Secretary of State, the Bureau of Motor Vehicles, and in county registries of deeds, and a several loads of timber were seized from a logging operation.

This year the Collections Program submitted legislation to simplify the collection of monies owed through administrative decisions. *An Act to Speed Recovery of Amounts Due the State* was enacted at 14 M.R.S. Section 3138.

OAG represents the State Tax Assessor as a creditor in bankruptcy proceedings, as a creditor with claims against estates in Probate Court, and in foreclosure cases. In bankruptcy, the office has handled hundreds of cases to ensure the proper treatment of MRS' priority tax claims, responded to objections to MRS claims, and ensured that debtors are complying with their tax

filing and payment obligations. OAG also brings actions to obtain judgments for out-of-state collection of unpaid Maine taxes.

In 2010, the office obtained judgments in the total amount of \$1,177,769.48 and collected \$362,675.40. In 2011 to date, the office obtained judgments in the total amount of \$1,060,038.71 and collected \$182,557.58.

District Attorneys

The eight popularly elected district attorneys are responsible for the prosecution of the majority of criminal offenses that occur within their respective prosecutorial districts. Murder prosecutions are handled by the Criminal Division of the OAG. The district attorneys and the attorney general work together in the area of drug prosecutions -- four assistant attorneys general serve as Maine Drug Task Force attorneys physically situated in York, Cumberland and Androscoggin counties, with one assistant attorney general covering both Penobscot and Hancock counties. The Maine Prosecutors' Association meets monthly at the Augusta Office of the Attorney General, providing an opportunity for the attorney general and his staff to meet with the district attorneys and discuss issues of mutual concern. The Administrative Division of the OAG handles the payroll, benefits and other human resource matters for all the district attorneys and assistant district attorneys. Other staff in the district attorneys' offices are county employees.

In 2010, the eight district attorneys, with the assistance of 76 assistant district attorneys handled 62,188 adult criminal cases and 3,662 juvenile prosecutions. This is an average of 844 cases per assistant district attorney, an annual case load three times the recommended maximum standard set by the American Bar Association.

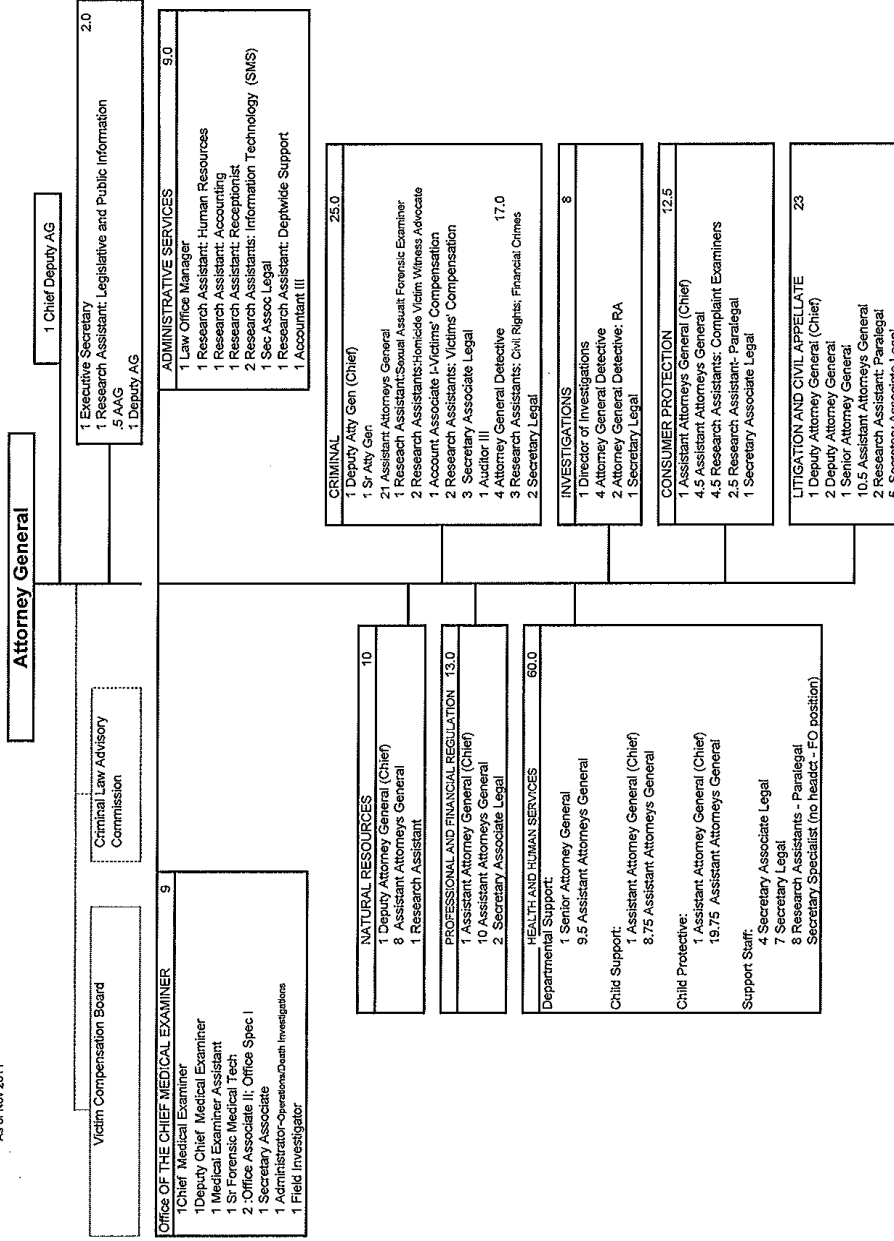
The district attorneys review thousands of police reports to determine whether there are sufficient grounds to issue a criminal complaint, sponsor police training and continuing legal education to law enforcement, provide legal advice to county governments, handle the many criminal appeals that are filed every year, and serve on innumerable committees, working groups, boards and commissions.

The extraordinarily heavy work load of the district attorneys and the assistant district attorneys is managed by way of long hours and hard work. Recent funding cutbacks place even greater pressures on the district attorneys. The district attorneys will continue to work with law enforcement, the judicial branch, state and local governments to deal with the many challenges that face them and continue to pursue the goal of promoting public safety and justice for the people of Maine.

C. Organizational Structure

Organizational Chart

As of Nov 2011



*This chart reflects headcount of 188.5.
 ** This chart includes vacant positions

D. Compliance with Federal and State Health & Safety Laws

Policy Against Harassment

Domestic Violence Workplace Policy

Non-Discrimination Notice

Equal Opportunity Affirmative Action Policy Statement

Health and Safety Committee

**OFFICE OF THE ATTORNEY GENERAL
POLICY STATEMENT AGAINST HARASSMENT**

I. General Policy Statement

The Maine Office of the Attorney General recognizes the dignity of the individual employee and the right of employees to work in an environment that is free of intimidation and harassment. Such intimidation or harassment based on race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the Maine Workers' Compensation Act, marital status, or genetic information is a violation of State policy. Because such harassment seriously undermines the integrity of the work place and adversely affects employee morale, it is unacceptable and will not be tolerated. In addition, it is considered grounds for disciplinary action up to and including discharge. Harassment based on race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the Maine Workers' Compensation Act or genetic information may also constitute illegal employment discrimination.

Examples of harassment related to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the Maine Workers' Compensation Act, marital status, or genetic information include the following, which may be a series of incidents or a single occurrence:

- Unwelcome sexual advances, gestures, comments, or contact;
- Threats;
- Offensive jokes;
- Subjecting employees to ridicule, slurs, or derogatory actions;
- Basing employment decisions or practices on submission to such harassment;
- Refusal to cooperate with employees in performing work assignments;
- Inequitable disciplinary actions and work assignments.

Further examples of sexual harassment include: behavior that is verbal and sexual in nature – such as comments about a person's looks, personal inquiries, sexual jokes, use of derogatory sexual stereotypes, uttering sexually suggestive sounds, writing sexual notes, use of State computer equipment to send, receive and/or download material of a sexual nature; **non-verbal sexual behavior**- such as looking someone up and down, staring or leering at someone's body, deliberate blocking of a person's path, displaying sexual visuals, making sexual gestures; or **physical** – such as pinching, grabbing, sexual assault or any physical contact of a sexual nature.

As a matter of State policy, any behavior of a sexual nature in the workplace is considered unprofessional regardless of whether it constitutes illegal sexual harassment. Similarly, any conduct that degrades, ridicules or otherwise draws unwanted attention to any employee or other person having dealings with the Office on the basis of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the

Maine Workers' Compensation Act, marital status, or genetic information is considered unprofessional regardless of whether it constitutes unlawful harassment. Such unprofessional conduct will not be tolerated in the work place because it undermines morale, interferes with performance and demeans its victims. Each employee is personally responsible for compliance with this policy.

As part of their supervisory responsibilities, supervisors are required to actively prevent or stop inappropriate, unprofessional conduct in the workplace regardless of whether the conduct rises to the level of illegal harassment. If they become aware of any such conduct occurring, they must take immediate and appropriate corrective action, including discipline, to end the conduct. Corrective action is required regardless of whether a complaint is made or the conduct appears to be unwelcome.

The Office's EEO Coordinator may be consulted for advice and direction and must be contacted if a complaint is received, even if the complainant requests that no action be taken. Managers and supervisors who fail to fulfill their obligations under this policy will be subject to disciplinary action, up to and including discharge.

II. Definitions

"Sexual harassment" is defined as unwelcome sexual conduct that is a term or condition of employment. Unwelcome sexual conduct is sexual harassment when submission to such conduct is expressly or implicitly made a term or condition of employment.

"Quid pro quo" harassment occurs when submission or rejection of such conduct is used as the basis for employment decisions affecting an individual, *such as promotions in exchange for sexual favors, or an unfavorable change of duties in response to rejected sexual advances.*

"Hostile Work Environment." Unwelcome sexual conduct which unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment also constitutes illegal sexual harassment. Conduct which is not sexual in nature may still create a sexually hostile work environment if it is based on the victim's gender. Such conduct may include excluding or isolating employees, tampering with belongings or equipment, or physical or verbal abuse based on gender.

III. Applicability

This policy applies to:

- Co-workers and supervisors
- Outside parties having dealings with the Office (i.e., customers, vendors, contractors)
- Interactions between individuals of the same sex as well as of the opposite sex
- Interactions in the workplace during work hours as well as outside activities related to the workplace (i.e., parties, trips, conferences)

IV. Complaint Process

The Office of the Attorney General is committed to preventing harassment prohibited by this policy through education and dissemination of information as well as employee accountability. Such harassment may be reported by any employee, regardless of whether that employee is the recipient of the harassment, a witness or otherwise becomes aware of harassment prohibited by this policy.

Internal complaints may be filed by contacting any of the following individuals:

- Immediate supervisor or any supervisor/manager in the chain of command
- Office EEO Coordinator
- Office Human Resource Manager
- State EEO Coordinator

Although every attempt will be made to resolve complaints at the lowest possible level, if an investigation is warranted, it will be conducted promptly and with as much confidentiality as possible, respecting the rights of all parties involved. All employees are expected to cooperate in any departmental investigation of harassment.

In addition to initiating the internal complaint procedure, employees covered by collective bargaining agreements may file a grievance through the applicable grievance procedure. A discrimination complaint alleging harassment on the basis of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the Maine Workers' Compensation Act or genetic information may also be submitted to the Maine Human Rights Commission at any time within 300 days of the alleged discriminatory incident. It is not required that any of the above procedures be utilized first or in any sequence, nor is it required that any procedure be exhausted before the other is used. In those instances where the prior workers' compensation claim or right is made against the State of Maine, the complaint may be submitted to the Maine Workers' Compensation Board.

For more information, contact: Maine Human Rights Commission.....207/624-6050
207/624-6064 (TTY)
State EEO Coordinator.....207/287-4651
207/287-4537 (TTY)
Office EEO Coordinator.....207/626-8838
1-800-577-6690 (TTY)

V. Retaliation


Any form of retaliatory action or threat or suggestion of retaliation by either employees or supervisors against any person filing a complaint under this policy or assisting in an investigation is a violation of State policy. Any discriminatory action against any individual because the individual has opposed a practice that would be a violation of the Maine Human Rights Act, Title VII, the Americans with Disabilities Act, or the Age Discrimination in Employment Act or because the individual has made a charge, testified or assisted in any

investigation, proceeding or hearing under the Maine Human Rights Act, Title VII, the Americans with Disabilities Act or the Age Discrimination in Employment Act is illegal. A complainant is protected from retaliation regardless of the merits of the original complaint. Retaliation should be reported in the same manner as described above for complaints of harassment and will be promptly investigated. Such retaliatory conduct will be grounds for disciplinary action.

Assistant Attorney General Christina Moylan, the Office's EEO Coordinator, is responsible for handling complaints and providing technical assistance to staff regarding these issues. She may be contacted at 207/626-8838 (TTY: 1-800-577-6690).

Laurel Shippee, the State EEO Coordinator in the Bureau of Human Resources, is also available as a resource to any state employee or supervisor. She may be reached at 207/287-4651 (TTY: 207/287-4537).

Reissued: May 2, 2011


WILLIAM J. SCHNEIDER
ATTORNEY GENERAL

Domestic Violence Workplace Policy

I. STATEMENT OF PURPOSE

The Office of the Attorney General (hereinafter "the Office") is committed to promoting the health and safety of its employees. This commitment includes the prevention and reduction of the incidence and effects of domestic violence.

While the Office recognizes that both men and women are victims of domestic violence, the overwhelming majority of victims of domestic violence are women. In fact, domestic violence is the leading cause of injury to women in the United States.

The Office recognizes that domestic violence is a workplace issue. Domestic violence does not stay at home when victims and perpetrators go to work. Victims may be especially vulnerable while they are at work. Domestic violence can compromise the safety of employees and directly interfere with the mission of the Office by decreasing morale and productivity, as well as by increasing absenteeism and health costs.

For these reasons, the Office has established this workplace domestic violence policy. The specific purposes of the policy are to:

- Create a supportive workplace environment in which employees feel comfortable discussing domestic violence issues and seeking assistance for domestic violence situations;
- Develop responsive policies and procedures to assist employees who are affected by domestic violence;
- Provide immediate assistance to victims;
- Provide assistance and/or disciplinary action to employees who are perpetrators of abuse; and
- Offer training on recognizing and responding to domestic violence.

This policy recognizes that, in accordance with 26 M.R.S.A. § 850, an employer must grant reasonable and necessary leave from work, with or without pay, to an employee who is a victim to prepare for and attend court proceedings; receive medical treatment; attend to the medical treatment of a child, parent or spouse who is a victim; or obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking. The necessity of the leave must be based upon the employee or the employee's daughter, son, parent or spouse being a victim of violence, assault, sexual assault, stalking or any act that would support an order for protection from abuse.

The Office will not tolerate domestic violence in the workplace, and will take action to prevent and correct the misuse of the State's resources in connection with domestic violence. Misuse of the State's resources in connection with domestic violence will result in discipline up to and including discharge.

II. DEFINITIONS

1. **Domestic Violence:** A pattern of coercive behavior that is used by a person against family or household members to gain power and control over the other party in the relationship. This behavior may include any of the following: physical violence, sexual abuse, emotional and psychological intimidation, verbal abuse and threats, stalking, isolation from friends and family, economic control, and destruction of personal property. Domestic violence occurs between people of all racial, economic, educational, and religious backgrounds. It occurs in heterosexual and same-sex relationships, between married and unmarried partners, between current and former partners, and between other family and household members.
2. **Batterer, Perpetrator, or Abuser:** An individual who commits domestic violence, sexual assault, or stalking.
3. **Sexual assault:** An act of sexual violence whereby a party forces, coerces, or manipulates another to participate in unwanted sexual activity. This behavior may include stranger rape, date and acquaintance rape, marital or partner rape, incest, child sexual abuse, sexual contact, sexual harassment, ritual abuse, exposure, and voyeurism.
4. **Stalking:** An unwanted course of conduct by one person directed toward another specific person that is intended to cause that person fear of harm, emotional distress or substantial inconvenience. Stalking may involve direct or indirect contact and may occur between intimate partners, acquaintances, or strangers. Stalking behaviors include but are not limited to: following a person; appearing at a person's home or workplace; making harassing phone calls; sending letters or e-mails; leaving written messages or objects; or vandalizing a person's property.
5. **Survivor or Victim:** An individual subjected to domestic violence, sexual assault, or stalking.
6. **Domestic Violence Response Team/Responder:** Designated employees with specialized training to handle disclosures, referrals, and office safety planning. All Office staff with management or supervisory responsibility are Responders. *See Appendix for a list of current Responders.*
7. **Workplace:** An employee is considered to be in the workplace when the employee is conducting State business, is in State-owned or leased workspace, is using the facilities or services of the State, is using State resources or equipment, is wearing a uniform, is using a vehicle that is owned or leased by the State or its agencies, is attending a work-related conference, or is traveling on behalf of the State.
8. **Workplace Safety Plan:** A strategy developed in collaboration with a victim to implement workplace safety options, including, but not limited to: setting up procedures for alerting security or police; temporary relocation of the victim to a secure area; voluntary temporary transfer or permanent relocation to a new work site; reassignment of parking space; escort for entry to and exit from the work site; responding to telephone, fax, e-mail, or mail harassment; and, keeping a photograph of the abuser or a copy of an existing court order in a confidential on-site location and providing copies to designated personnel.

III. PERSONS COVERED BY THIS POLICY

Persons covered by this policy include Office employees, interns, contractors, volunteers, or temporary workers, in any workplace location.

III. STATEMENT OF CONFIDENTIALITY

The Office recognizes and respects an employee's right to privacy and need for confidentiality and autonomy. To the extent permitted by law and unless the substance of the employee's disclosure demands otherwise, the Office will maintain the confidentiality of an employee's disclosure. Responders will share disclosures with the Chief of Operations (COO). However, unless necessary, the information will not be shared with other employees in the Office. Whenever possible, the employee will be given notice of necessary further disclosures. Further disclosure may be necessary if, in the opinion of the person to whom the initial disclosure is made, an abuser presents a threat to the safety of any person, the employee has expressed homicidal or suicidal intentions, or there is reasonable cause to suspect abuse, neglect or exploitation of children or incapacitated or dependent adults.

IV. EDUCATION AND OUTREACH

1. This policy will be distributed to all current employees. New employees will receive the policy upon commencing employment. All employees are expected to become familiar with this policy and to attend domestic violence training as provided by the Office. The policy is also posted on the Office's website.
2. Managers, supervisors, and members of the Domestic Violence Response Team will attend specialized training, as provided by the Office, focused on identifying and responding to issues of domestic violence in the workplace.
3. An Education and Outreach Committee will be established to provide continuing opportunities for education and discussion. Such activities may include "Lunch and Learn" sessions, speakers, and a lending library. The Committee will attempt to maintain, publish, and post a list of resources for survivors of domestic violence in locations of high visibility, such as bulletin boards, break rooms, and the Office intranet. Resources should include but not be limited to: the hotline numbers of local domestic violence projects, the State of Maine's confidential Employee Assistance Program ("EAP"), the Maine Coalition to End Domestic Violence (statewide domestic violence coalition), and the phone number and description of other domestic violence resources in the community (court, police, victim advocates, legal assistance, and sexual assault services and hotlines). The Committee will also maintain a current list of state-certified batterers intervention programs.

V. RESPONSE AND ASSISTANCE

1. Disclosure; Requests for Information, Referral, and Assistance

The Office will offer support and referrals for assistance to those employees who disclose concerns or request help. The Office will designate trained persons to whom disclosures may be made. Designated persons include members of the Response Team and all Division Chiefs, the Chief of Operations, the Chief Deputy, and the Attorney General. All employees wishing to discuss domestic violence issues are encouraged to speak with whomever they are most comfortable.

2. Response to Victims

1. Any person who is concerned about his or her safety at work should speak to a member of the Response Team, a Division Chief, the Chief of Operations, the Chief Deputy, or the Attorney General.
2. If domestic violence is occurring in the workplace, is affecting the performance of the victim or the victim's co-workers, or if the victim otherwise requests, the Office will assist the victim. The Office recognizes all persons' rights to privacy, autonomy, and safety, and the corresponding need to control the process following any disclosure. To the extent that disclosures do not implicate issues of workplace safety and performance, and to the extent permitted by law and this policy, the Office's response will be guided by the expressed wishes of the victim, and may include the following:
 1. Referring individuals to appropriate agencies and services, including EAP, local domestic violence projects and sexual assault centers, legal services, law enforcement, medical and counseling services;
 2. Assessment of the victim's need to be absent from work;
 3. Providing information regarding employment benefits, including processes for changing insurance benefits, requesting paid and unpaid leave, and changing pay arrangements (such as direct deposit of paychecks)
 4. Developing an individualized workplace safety plan in conjunction with appropriate agencies and services.
3. If any person is at immediate risk in the workplace, the Office will follow protocols for notifying law enforcement and Capitol Security, and follow applicable emergency or safety procedures.

4. Victims are encouraged to disclose the existence of Temporary and Permanent Orders for Protection from Abuse or Harassment to a member of the Domestic Violence Response Team, especially when the order includes a provision that the perpetrator is not to have contact with the victim at the victim's place of employment. The responder will follow the provisions of this policy with respect to response and assistance to the victim, and address the issue of workplace safety plans with the victim as appropriate.
3. Response to Employees Concerned about Domestic Violence
 1. If an employee has a concern that a co-worker is a victim of domestic violence, the employee is encouraged to contact a member of the Response Team to discuss the concern. The responder will work with the concerned employee to determine the appropriate response. In addition, the responder may discuss the matter with the Chief of Operations, the Chief Deputy Attorney General, or the Attorney General if there is an immediate safety risk to anyone in the workplace, or if the perceived problem has an affect on the workplace, including but not limited to safety, job performance, and morale. The responder will maintain the confidentiality of the disclosing employee to the extent permitted by law and this policy.
 2. If an employee experiences or witnesses violence or threats of violence in the workplace, the employee should report the incident to a supervisor or the Chief of Operations immediately.
 3. Employees may wish to seek assistance and information from a responder before speaking with a perceived victim, but this approach is not required. If an employee discusses concerns about safety with a victim, the employee should only offer help, not judgment. The employee should also:
 1. Refer the victim to appropriate agencies and services, including EAP, local domestic violence projects and sexual assault centers, legal services, law enforcement, medical and counseling services; and
 2. Remind the employee about this policy; and
 3. Encourage the victim to seek assistance when addressing personal and workplace safety issues.

Documentation

The COO will maintain copies of orders for protection from abuse and other documents that demonstrate workplace domestic violence in a confidential file. The Office will develop necessary protocols related to maintaining records of domestic violence disclosures.

WORK PERFORMANCE

In instances where the Department is aware that a victim has performance or conduct problems as a result of domestic violence, sexual assault or stalking, the Department will offer support and an opportunity to correct the problems. Supervisors may develop a work plan with the employee to assist and support the employee in meeting performance expectations.

The Division Chief or supervisor, in collaboration with the employee and any other appropriate agencies (which may include the EAP, the Bureau of Human Resources, or the collective bargaining agent), should allow a reasonable amount of time away from work for the employee to obtain assistance regarding domestic violence, sexual assault or stalking. This time may be drawn from sick or vacation leave, unpaid leave, or a leave bank, as determined appropriate and available. Any such leave will be consistent, at a minimum, with 26 M.R.S.A. § 850 and any applicable the collective bargaining agreement.

Nothing in this policy alters the authority of this Office to establish performance expectations, counsel employees, impose discipline, reassign duties, place an employee on leave, or take other action as it deems appropriate.

Information or documents pertaining to a victim's involvement in a domestic violence, sexual assault or stalking situation will be kept in a separate confidential file and will not be considered for purposes of hiring, transfer or promotion.

In the event that an employee is ultimately unable to maintain employment with the Office as a result of domestic violence, the employee will be provided with information about Title 26, M.R.S.A., §§1043 and 1193 (Unemployment Compensation Disqualification and Misconduct Clauses) which provides victims with the right to collect unemployment benefits if they leave their employment in order to preserve their own safety, or if they have been terminated because of performance issues stemming from domestic violence.

VII. PERPETRATORS

1. The Office encourages employees who are perpetrators to voluntarily seek assistance from any of the community resources or the State's confidential Employee Assistance Program.
2. If an employee discloses that he or she is or has been a perpetrator of domestic violence, the responder should refer the employee to the EAP and a local state-certified Batterers' Intervention Project. In every situation where an employee makes this disclosure, the COO or other appropriate individual will immediately be included in the discussion related to the disclosure.
3. If an employee is concerned that a co-worker is a perpetrator of domestic violence, the employee should notify a member of the Response Team. The employee shall not confront the co-worker directly. Instead, the responder will discuss the issue with the COO who will decide how best to address the situation.
4. Employees who, while on-duty, engage in behaviors that constitute domestic violence, sexual assault or stalking will be subject to discipline, up to and including termination. In

some cases, where there is a connection between off-duty conduct of this nature and one's employment with the State, that off-duty conduct may lead to discipline, up to and including termination.

1. On-Duty: Any employee who commits domestic violence, sexual assault or stalking in the workplace (see definitions) will be subject to corrective or disciplinary action, up to and including termination.

The use of State resources or equipment in connection with domestic violence, sexual assault or stalking is prohibited. Any employee who misuses any State resources such as work time, work place telephones, a firearm, facsimile machines, mail, electronic mail, a state vehicle, state credit card or other means to commit domestic violence, sexual assault or stalking at any time or place, will be subject to corrective or disciplinary action, up to and including termination.

2. Off-Duty: Any employee who is: (i) found by the Office to have engaged in domestic violence, sexual assault or stalking; or (ii) arrested, convicted, or named as a defendant in a protective order as a result of domestic violence, sexual assault or stalking, may be subject to corrective or disciplinary action, up to and including termination when such action has a nexus/connection to their employment with the State.

5. Criminal charges and protective orders

Any employee who is a named defendant in a civil or criminal action involving domestic violence, sexual assault or stalking must disclose any order regarding protection from abuse or harassment, or any condition of bail or probation applicable to the employee that includes:

1. Conditions that may interfere in any way with the employee's ability to perform job duties;
2. Conditions prohibiting or limiting contact with other employees of this Office; or
3. Conditions prohibiting or limiting contact with State employees of other Departments with whom there is a work relationship.

The employee must disclose the above information to their Division Chief or the COO at the beginning of the employee's next scheduled work day after entry of the order or imposition of applicable condition of bail or probation.

Failure to provide the above information may result in disciplinary action up to and including termination.

VIII. COORDINATION WITH OTHER STATE AGENCIES

When an employee of this office is involved in a situation of domestic violence, sexual assault or stalking with an employee of another State agency and there is reason to believe a workplace issue is involved, the COO will work with the other agency to assure an appropriate coordinated response.

IX. NON-RETALIATION

No manager or supervisor shall take any retaliatory action against an employee for making a complaint or observation of domestic violence, sexual assault or stalking or otherwise asserting rights or responsibilities under this policy or relevant laws. Any manager or supervisor who is found to have taken retaliatory action against an employee in violation of this section may be subject to disciplinary action, up to and including termination.

OTHER POLICIES

The State of Maine and the Office also have policies covering Equal Employment Opportunity/Affirmative Action, Harassment, and E-mail Usage and the Internet which are available on the Office's website and in the Office Employee Handbook.

XI. CONCLUSION

The Office is committed to providing a supportive workplace environment free of domestic violence. The Office will work to respond and provide immediate assistance to employees affected by abuse.

Employees with questions about this policy or ideas to improve this policy should contact a responder or Division Chief.

- Effective Date: September 4, 2003 Revised: March 23, 2007. This policy is currently being updated.

**STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
NON-DISCRIMINATION POLICY**

The Office of the Attorney General does not discriminate on the basis of physical or mental disability, race, color, creed, age, sex, sexual orientation, religion, ancestry, or national origin in admission to, access to, or operation of its services, programs, or activities.

This notice is provided under Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 *et. seq.*), Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. § 794), Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 1981, 2000d *et. seq.*), the Age Discrimination Act as amended (42 U.S.C. § 6101 *et. seq.*), the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. § 3789d), the Victims of Crime Act (42 U.S.C. § 10601 *et. seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et. seq.*) and the Maine Human Rights Act (5 M.R.S. § 4551, *et seq.*), and the regulations promulgated thereunder.

The Equal Employment Opportunity Coordinator ("EEO Coordinator") of the Office of the Attorney General has been designated to coordinate the efforts of the Office of the Attorney General to comply with the above referenced federal laws and regulations. Inquiries concerning application of these laws and regulations and the grievance procedure for resolving complaints alleging violation of these laws and regulations may be referred to the EEO Coordinator for the Office of the Attorney General, who can provide a copy of the Office's EEO/AA Policy Statement, and/or the Office's Reasonable Modification Guidelines and Grievance Procedure, upon request. The EEO Coordinator for the Office of the Attorney General may be reached at 6 State House Station, Augusta, ME 04333-0006 or 207/626-8800 or 1-800-577-6690 (TTY). Inquiries concerning application of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 may also be referred to the ADA Coordinator for the State of Maine. The ADA Coordinator for the State of Maine may be reached at 2 Anthony Avenue, 150 State House Station, Augusta, ME 04333-0150 or 207/624-5956, 1-800-698-4440 (TTY), or 207/624-5980(fax). A person with a complaint of discrimination under the above referenced laws may also file a complaint with the Maine Human Rights Commission, the Civil Rights Division of the U.S. Department of Justice, or with any other appropriate court or governmental agency.

Individuals who need auxiliary aids or services for effective communication in services, programs and activities of the Office of the Attorney General are invited to make their needs and preferences known to the EEO Coordinator for the Office of the Attorney General. This information is available in alternate formats upon request.

Reissued: May 2, 2011



WILLIAM J. SCHNEIDER
ATTORNEY GENERAL

**OFFICE OF THE ATTORNEY GENERAL
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION POLICY STATEMENT**

The Office of the Attorney General shall continue to pursue a policy of non-discrimination in all employment actions, practices, procedures and conditions of employment.


1. Employment decisions will be based on the principles of equal employment opportunity. Recruitment, testing, selection, and promotion will be administered without regard to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the Maine Workers' Compensation Act, marital status, or genetic information unless a bona fide occupational qualification exists.
2. Further, personnel actions and conditions of employment, such as compensation, benefits, layoffs, job assignments, employee development opportunities and discipline shall be administered without regard to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the Maine Workers' Compensation Act, marital status, or genetic information.
3. Reasonable accommodations will be made for any qualified individual, applicant or employee, in accordance with the provisions of the Maine Human Rights Act and the Americans with Disabilities Act.
4. Managers and supervisors are responsible for awareness of and response to potential discriminatory situations. Employees are required to cooperate fully with the investigation and/or resolution of any discrimination complaint.
5. Managers and supervisors are required to actively prevent and correct retaliation or harassment toward any employee who has been involved in the filing, investigation, or resolution of a discrimination claim.
6. The Office will address and attempt to resolve employee complaints regarding discrimination and harassment as expeditiously as possible. Supervisors and managers are required to contact the Office EEO Coordinator if they receive a complaint of this nature.
7. This policy shall not be construed to prohibit any employment action or policy which is required by federal law, rule or executive order.

I have assigned responsibility for the implementation, monitoring, and record keeping of the EEO/AA Program to Assistant Attorney General Christina Moylan, the Office's EEO Coordinator. The EEO Coordinator is also responsible for providing technical assistance to applicants and employees.

The State EEO Coordinator in the Bureau of Human Resources, Laurel Shippee, is also available as a resource to any state employee or supervisor. She may be reached at 207/287-4651 (TTY: 207/287-4537).

I sincerely appreciate the continued cooperation and support of all employees and supervisors in making the Office a successful equal opportunity employer and a positive example for other employers in the State.

Reissued: May 1, 2011



WILLIAM J. SCHNEIDER
ATTORNEY GENERAL

Health and Safety Committee

The Health and Safety Committee for the Office of the Attorney General is committed to providing a safe and healthy environment for all staff and visitors who come to our locations. Our offices recognize that a safe and healthy working environment is beneficial to meeting the needs of the public. The committee is charged with maintaining evacuation plans and training staff to assist employees and the public in case of an emergency. We are dedicated to educating and encouraging a lifestyle aimed at achieving and maintaining physical, mental, and occupational well-being.

D. Financial Summary

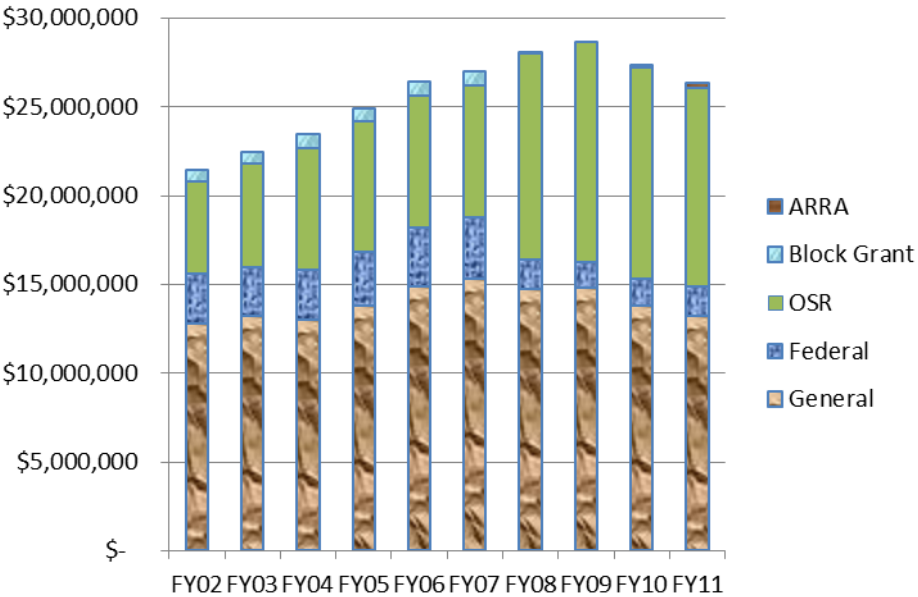
Actual Expenditures by Program by Fund
Fund as Percent of Total Expenditure
Expenditures by Fund
Consolidated Financial Summary
Position Count by Account

Office of the Attorney General
Actual Expenditures by Program by Fund

FY	Program	FUND						Total
		General	Highway	Federal	OSR	Block Grant	ARRA	
2007	Civil Rights	\$238,092						\$238,092
	Attorney General	\$4,989,103		\$1,290,296	\$5,890,741			\$12,170,140
	District Attorneys	\$7,633,915		\$38,158	\$342,805			\$8,014,878
	Chief Medical Examiner	\$1,207,153		\$28,190	\$13,941			\$1,249,284
	AG - Human Services	\$1,211,498		\$1,949,882	\$523,336	\$830,328		\$4,515,044
	Victims' Compensation			\$169,186	\$591,486			\$760,672
	Contingent - Lawsuit							\$0
	Contingent - Lawsuit							\$0
	Fund for Healthy Maine				\$69,289			\$69,289
	Total FY07	\$15,279,761	\$0	\$3,475,712	\$7,431,598	\$830,328	\$0	\$27,017,399
2008	Civil Rights	\$174,398						\$174,398
	Attorney General	\$5,139,912		\$1,380,195	\$4,952,822			\$11,472,929
	District Attorneys	\$8,087,129		\$51,333	\$162,399			\$8,300,861
	Chief Medical Examiner	\$1,340,911		\$29,641				\$1,370,552
	AG - Human Services			\$40,407	\$5,873,220	\$17,927		\$5,931,554
	Victims' Compensation			\$147,243	\$522,987			\$670,230
	Contingent - Lawsuit							\$0
	Contingent - Lawsuit							\$0
	Fund for Healthy Maine				\$84,938			\$84,938
	Total FY08	\$14,742,350	\$0	\$1,648,819	\$11,596,366	\$17,927	\$0	\$28,005,462
2009	Civil Rights	\$216,796						\$216,796
	Attorney General	\$4,967,758		\$1,147,052	\$5,236,873			\$11,351,683
	District Attorneys	\$8,233,087		\$41,181	\$82			\$8,274,350
	Chief Medical Examiner	\$1,397,262			\$68			\$1,397,330
	AG - Human Services				\$6,353,607			\$6,353,607
	Victims' Compensation			\$222,993	\$711,802			\$934,795
	Contingent - Lawsuit							\$0
	Contingent - Lawsuit							\$0
	Fund for Healthy Maine				\$95,842			\$95,842
	Total FY09	\$14,814,903	\$0	\$1,411,226	\$12,398,274	\$0	\$0	\$28,624,403
2010	Civil Rights	\$202,723						\$202,723
	Attorney General	\$4,262,701		\$1,254,100	\$5,142,768		\$132,068	\$10,791,637
	District Attorneys	\$8,031,030		\$39,306				\$8,070,336
	Chief Medical Examiner	\$1,273,752		\$36,513	\$20			\$1,310,285
	AG - Human Services				\$5,837,204			\$5,837,204
	Victims' Compensation			\$191,396	\$790,429		\$42,289	\$1,024,114
	Contingent - Lawsuit							\$0
	Contingent - Lawsuit							\$0
	Fund for Healthy Maine				\$136,130			\$136,130
	Total FY10	\$13,770,206	\$0	\$1,521,315	\$11,906,551	\$0	\$174,357	\$27,372,429
2011	Civil Rights	\$195,239						\$195,239
	Attorney General	\$3,945,849		\$1,236,878	\$4,750,822		\$231,187	\$10,164,736
	District Attorneys	\$7,836,006		\$64,207	\$81,653			\$7,981,866
	Chief Medical Examiner	\$1,254,847		\$79,943				\$1,334,790
	AG - Human Services				\$5,537,601			\$5,537,601
	Victims' Compensation			\$270,500	\$684,183			\$954,683
	Contingent - Lawsuit							\$0
	Contingent - Lawsuit							\$0
	Fund for Healthy Maine				\$143,842			\$143,842
	Total FY11	\$13,231,941	\$0	\$1,651,528	\$11,198,101	\$0	\$231,187	\$26,312,757

Fiscal Yr	Fund				
	General	Federal	OSR	Block Grant	ARRA
FY02	59.79%	13.00%	24.25%	2.96%	0.00%
FY03	58.63%	12.38%	26.10%	2.89%	0.00%
FY04	55.43%	12.16%	29.21%	3.21%	0.00%
FY05	55.30%	12.08%	29.51%	3.12%	0.00%
FY06	56.25%	12.62%	28.06%	3.07%	0.00%
FY07	56.56%	12.86%	27.51%	3.07%	0.00%
FY08	52.64%	5.89%	41.41%	0.06%	0.00%
FY09	51.76%	4.93%	43.31%	0.00%	0.00%
FY10	50.31%	5.56%	43.50%	0.00%	0.64%
FY11	50.29%	6.28%	42.56%	0.00%	0.88%

Office of the Attorney General Expenditures by Fund



Office of the Attorney General

Consolidated Financial Summary
Actual Expenditures by Fiscal Year

Fiscal Yr	Fund					Total
	General	Federal	OSR	Block Grant	ARRA	
FY02	\$ 12,793,940	\$ 2,782,381	\$ 5,189,200	\$ 633,399		\$ 21,398,920
FY03	\$ 13,176,899	\$ 2,782,641	\$ 5,864,635	\$ 649,409		\$ 22,473,584
FY04	\$ 12,990,556	\$ 2,848,821	\$ 6,844,930	\$ 752,384		\$ 23,436,691
FY05	\$ 13,781,048	\$ 3,010,574	\$ 7,353,297	\$ 777,085		\$ 24,922,004
FY06	\$ 14,868,855	\$ 3,335,311	\$ 7,417,712	\$ 812,327		\$ 26,434,205
FY07	\$ 15,279,761	\$ 3,475,712	\$ 7,431,598	\$ 830,328		\$ 27,017,399
FY08	\$ 14,742,350	\$ 1,648,819	\$ 11,596,366	\$ 17,927		\$ 28,005,462
FY09	\$ 14,814,903	\$ 1,411,226	\$ 12,398,274	\$ -		\$ 28,624,403
FY10	\$ 13,770,206	\$ 1,521,315	\$ 11,906,551	\$ -	\$ 174,357	\$ 27,372,429
FY11	\$ 13,231,941	\$ 1,651,528	\$ 11,198,101	\$ -	\$ 231,187	\$ 26,312,757

State of Maine
Budget & Financial Management System

Position Count by Account

		2012-S01 Prior Yr Actual FY 10	2012-S01 Total FY 12	2012-S01 Total FY 13
ATT00	DEPARTMENT OF THE ATTORNEY GENERAL			
01028A003901	CIVIL RIGHTS			
	LEGISLATIVE COUNT	2.000	2.000	2.000
	Account Total	2.000	2.000	2.000
01028A031001	ATTORNEY GENERAL			
	LEGISLATIVE COUNT	50.500	50.000	50.000
	Account Total	50.500	50.000	50.000
01028A040901	DIST ATTORNEYS SALARIES			
	LEGISLATIVE COUNT	83.000	83.000	83.000
	Account Total	83.000	83.000	83.000
01028A041201	CHIEF MEDICAL EXAMINER			
	LEGISLATIVE COUNT	9.000	9.000	9.000
	Account Total	9.000	9.000	9.000
TOTAL 010 GENERAL FUND				
	LEGISLATIVE COUNT	144.500	144.000	144.000
	FTE COUNT	0.000	0.000	0.000
	TOTAL 010 ATT00	144.500	144.000	144.000
01326A031001	ATTORNEY GENERAL			
	LEGISLATIVE COUNT	7.000	7.000	7.000
	Account Total	7.000	7.000	7.000
01326A031002	LEGAL EDUCATION PROGRAM			
	LEGISLATIVE COUNT	0.500		
	Account Total	0.500		
01326A031005	MEDICAID FRAUD CONTROL UNIT			
	LEGISLATIVE COUNT	8.000	8.000	8.000
	Account Total	8.000	8.000	8.000

State of Maine
Budget & Financial Management System

Position Count by Account

		2012-S01 Prior Yr Actual FY 10	2012-S01 Total FY 12	2012-S01 Total FY 13
ATT00	DEPARTMENT OF THE ATTORNEY GENERAL			
01326A040902	DISTRICT ATTORNEYS'			
	LEGISLATIVE COUNT	1,000	1,000	1,000
	Account Total	1,000	1,000	1,000
TOTAL 013	FEDERAL EXPENDITURES FUND			
	LEGISLATIVE COUNT	16,500	16,000	16,000
	FTE COUNT	0,000	0,000	0,000
	TOTAL 013 ATT00	16,500	16,000	16,000
01426A031001	ATTORNEY GENERAL			
	LEGISLATIVE COUNT	13,000	12,500	12,500
	Account Total	13,000	12,500	12,500
01426A031002	LEGAL ASST TO OTHER AGENCIES			
	LEGISLATIVE COUNT	24,000	24,000	24,000
	Account Total	24,000	24,000	24,000
01426A031003	CONSUMER FRAUD DIV/RUST BOOK			
	LEGISLATIVE COUNT	2,000	2,000	2,000
	Account Total	2,000	2,000	2,000
01426A031007	LEGAL SERVICES			
	LEGISLATIVE COUNT	3,000	3,000	3,000
	Account Total	3,000	3,000	3,000
01426A031008	LEGAL SERVICES			
	LEGISLATIVE COUNT	4,000	4,000	4,000
	Account Total	4,000	4,000	4,000
01426A031010	PETROLEUM MARKETING FUND			
	LEGISLATIVE COUNT	1,000	1,000	1,000
	Account Total	1,000	1,000	1,000

State of Maine
Budget & Financial Management System

Position Count by Account

		2012-S01 Prior Yr Actual FY 10	2012-S01 Total FY 12	2012-S01 Total FY 13
ATT00	DEPARTMENT OF THE ATTORNEY GENERAL			
01426A069601	HUMAN SERVICES - DIVISION OF			
	LEGISLATIVE COUNT	63.500	62.000	62.000
	Account Total	63.500	62.000	62.000
01426A071101	VICTIMS' COMPENSATION FUND			
	LEGISLATIVE COUNT	3.000	3.000	3.000
	Account Total	3.000	3.000	3.000
01426A094701	FHM - ATTORNEY GENERAL			
	LEGISLATIVE COUNT	1.500	1.000	1.000
	Account Total	1.500	1.000	1.000
TOTAL 014	OTHER SPECIAL REVENUE FUNDS			
	LEGISLATIVE COUNT	115.000	112.500	112.500
	FTE COUNT	0.000	0.000	0.000
	TOTAL 014 ATT00	115.000	112.500	112.500
TOTAL ATT00	DEPARTMENT OF THE ATTORNEY GENERAL			
	LEGISLATIVE COUNT	276.000	272.500	272.500
	FTE COUNT	0.000	0.000	0.000
	TOTAL ATT00	276.000	272.500	272.500
TOTAL		276.000	272.500	272.500

F. Regulatory Agenda

2011-2012 Regulatory Agenda

OFFICE OF THE MAINE ATTORNEY GENERAL

and

VICTIMS' COMPENSATION BOARD

2011-2012 REGULATORY AGENDA

AGENCY UMBRELLA-UNIT NUMBER: **26-239**

AGENCY NAME: **Office of the Attorney General**

CONTACT INFORMATION FOR THE AGENCY **RULE-MAKING LIAISON** (as defined by 5 MRSA §8051-A), including mailing address, phone, and e-mail address:

Phyllis Gardiner, Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8820
phyllis.gardiner@maine.gov

EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA: None

EXPECTED 2011-2012 RULE-MAKING ACTIVITY:

A. NEW CHAPTER & Amendment to Chapter 107: Data Security Breach Rules

STATUTORY BASIS: 10 MRSA §1350-A and 5 MRSA §207(2)

PURPOSE (of the rule): This rule will implement the data security breach statute, and provide guidance to businesses and state agencies on their responsibility to keep consumers' personally identifying information secure and their responsibilities when that security has been breached.

SCHEDULE FOR ADOPTION: Promulgation is anticipated to begin in 2012.

AFFECTED PARTIES: Businesses, consumers and state agencies.

CONSENSUS-BASED RULE DEVELOPMENT (as outlined in 5 MRSA §8051-B): We will consult with interested parties.

CONTACT PERSON: Linda Conti, Chief, Consumer Protection Division, 6 State House Station, Augusta, ME 04333-0006, Tel: (207) 626-8591; E-mail: linda.conti@maine.gov.

B. CHAPTER 2: Forfeiture Rules

STATUTORY BASIS: 29-A MRSA §2421, Forfeiture of Motor Vehicles for OUI; 17-A MRSA §285, Forfeiture of Equipment Used to Facilitate Violations

PURPOSE: Chapter 2 currently implements certain asset forfeiture provisions of the Maine Asset Forfeiture Law, 15 MRSA §§ 5821 *et seq.* Chapter 2 is being amended to adopt rules in two specific areas in which forfeiture is authorized:

1. Rules required by statute for the disposition to state, county, or municipal agencies of motor vehicles forfeited to the State after conviction of certain operating under the influence and operating after suspension offenses; and
2. Rules authorized by statute to provide guidelines for the disposition and use of equipment, including computers, forfeited pursuant to 17-A MRSA §285 upon a finding of guilty of any violation of Title 17-A, Chapter 12, Sexual Exploitation of Minors.

SCHEDULE FOR ADOPTION: Promulgation to begin during the winter of 2011-2012.

AFFECTED PARTIES: State, county and municipal law enforcement agencies to which motor vehicles, equipment or proceeds may be distributed.

CONSENSUS-BASED RULE DEVELOPMENT (as outlined in 5 MRSA §8051-B): The rules contemplated by 29-A MRSA §2421 are technically required to implement a statute. In both instances, the rules would track existing procedures of long-standing for the disposition of forfeited assets. This Office anticipates consulting with representatives of law enforcement agencies regarding the proposed amendments.

CONTACT PERSON: Laura Yustak Smith, Assistant Attorney General, Tel: (207) 626-8803, E-mail: laura.smith@maine.gov and William Savage, Assistant Attorney General, Tel: (207) 626-8804, E-mail: william.savage@maine.gov; Mailing Address: 6 State House Station, Augusta, ME 04333-0006.

C. CHAPTER 4: Rules Governing Disposition of Forfeited Firearms

STATUTORY BASIS: 17-A MRSA §1158-A, Forfeiture of Firearms

PURPOSE: Chapter 4 was originally adopted pursuant to 17-A MRSA §1158, which has been repealed and replaced by 17-A MRSA §1158-A. The rule should be updated to reflect the updated language in the statute and the current statutory authority.

SCHEDULE FOR ADOPTION: Promulgation to begin during the winter of 2011-2012.

AFFECTED PARTIES: State, county and municipal law enforcement agencies to which firearms may be forfeited.

CONSENSUS-BASED RULE DEVELOPMENT (as outlined in 5 MRSA §8051-B): The rules contemplated by 17-A MRSA §1158-A are technically required to implement a statute. The amended rules would track the updated statutory language, as well as existing long-standing rules and procedures regarding the disposition of forfeited firearms. This Office anticipates consulting with representatives of law enforcement agencies regarding the proposed amendments.

CONTACT PERSON: Laura Yustak Smith, Assistant Attorney General, Tel: (207) 626-8803, E-mail: laura.smith@maine.gov and William Savage, Assistant Attorney General, Tel: (207) 626-8804, E-mail: william.savage@maine.gov; Mailing Address: 6 State House Station, Augusta, ME 04333-0006.

AGENCY UMBRELLA-UNIT NUMBER: **26-550**

AGENCY NAME: Office of the Attorney General, **Victims' Compensation Board**

EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA: None

EXPECTED 2011-2012 RULE-MAKING ACTIVITY:

A. CHAPTER 6: Rules Regarding Limitations on Compensation

STATUTORY BASIS: The rules are authorized by 5 MRSA §3360-A(7)

PURPOSE: The rules of this chapter describe the extent and limits of benefits available under the Victims' Compensation Fund statute, as amended. The Victims' Compensation Board may revise and update this chapter as needed due to minor changes in the Victims' Compensation Fund statute in 2009.

SCHEDULE FOR ADOPTION: These rules may be amended during 2011-2012.

AFFECTED PARTIES: Crime victims in Maine who apply for benefits from the Victims' Compensation Fund.

CONSENSUS-BASED RULE DEVELOPMENT (as outlined in 5 MRSA §8051-B): Although we will continue to consult with interested parties, no formal consensus rule-making is anticipated.

CONTACT PERSON: Deborah Shaw Rice, Director, Victims' Compensation Program, 6 State House Station, Augusta, ME 04333-0006, Tel: (207) 626-8589, E-mail: Deb.Rice@Maine.gov.

B. CHAPTER 8: Rules for Sexual Assault Forensic Examinations

STATUTORY BASIS: The rules are authorized by 5 MRSA §§ 3360-A(7) & 3360-M(5)

PURPOSE (of the rule): The rules of this chapter prescribe procedures for payment by the Victims' Compensation Board of the costs of forensic examinations for alleged victims of gross sexual assault. A change in these rules may be made to reflect a statutory increase in the reimbursement amount. Other provisions of the Rules may be updated to reflect changes in medical treatment practices.

SCHEDULE FOR ADOPTION: These rules may be amended during 2011-2012.

AFFECTED PARTIES: Sexual assault victims who receive forensic examinations and Maine hospitals where those examinations are performed.

CONSENSUS-BASED RULE DEVELOPMENT (as outlined in 5 MRSA §8051-B): Although we will continue to consult with interested parties, no formal consensus rule-making is anticipated.

CONTACT PERSON: Deborah Shaw Rice, Director, Victims' Compensation Program, 6 State House Station, Augusta, ME 04333-0006, Tel: (207) 626-8589, E-mail: Deb.Rice@Maine.gov.

G. Agency Coordination with Other State and Federal Agencies

Coordination With Other State and Federal Agencies

The Office of Attorney General and members of our staff work cooperatively with other state and federal agencies in an effort to make the most of our resources. Some examples follow.

Child Protection - AAGs participate in the following: the Local Level Agreement Implementation Task Force (dealing with the Houlton Band of Maliseet Indians and child protection issues); the Advisory Panel for the Court Appointed Special Advocates (the CASA Program); the Child Death and Serious Injury Review Panel; the Domestic Violence Homicide Review Panel; the Maine Justice for Children Task Force; the Child Abuse and Neglect Evaluators Project; the Child Abuse Action Network; the Maine Indian Child Welfare Task Force; the Family Treatment Drug Court (FTDC) Steering Committee; and the Child and Family Services Review Performance Improvement Plan; the Maine Citizen's Review Panel.

Civil Rights - The Civil Rights Team Project and the Civil Rights Enforcement Unit work cooperatively with the United States Attorney's Office; the Maine Criminal Justice Academy; and all Maine law enforcement agencies and departments through officer training and our Designated Civil Rights Officer program.

Health Care - On the State level the Healthcare Crimes Unit is a member on the Maine Elder Death Review Team ("MEDART"). On the Federal level, staff of the Unit participate in the Healthcare Fraud Working Group of the District of Maine with the USAO, FBI, OIG-HHS, Postal Inspectors, IRS, HUD, etc. The Unit is a member of the National Association of Medicaid Fraud Control Units and currently the Director of the Unit is the regional representative to this group.

Criminal Justice/Investigations – Members of these two Divisions participate in a wide variety of committee work and cooperative ventures. These are set forth below.

The Victims' Compensation Program within the Office of the Attorney General and the Department of Corrections cooperate to collect restitution from convicted criminals for the benefit of crime victims and the Victims' Compensation Fund. Also, the Department of Justice has awarded the Office a grant to develop a Victims of Crime Act (VOCA) orientation guide for new state compensation program administrators. The Office's Victims' Compensation Program Director is an officer of the National Association and has been named by the Association president to be a member of the VOCA Orientation Guide Committee.

The federal Office for Victims of Crime (OVC) has provided a grant to the Department of Human Services to develop a Victim Assistance Academy. A number of staff from the Office of the Attorney General is actively engaged in this effort. The goal is to create a self-sustaining, academically based, training academy at the conclusion of the three-year grant. Each academy will provide 40 hours of curriculum for professionals in various fields providing services to crime victims.

The Maine Computer Crimes Task Force provides computer investigation services and expertise to law enforcement agencies statewide. The Task Force is a collaborative effort between the Attorney General's Office, the Maine State Police, the Brunswick Police Department and the Lewiston Police Department, with additional associate members from various municipal and county police departments throughout the state. It is funded through a federal Internet Crimes Against Children grant from the U.S. Department of Justice and through state budget allocation.

Staff from the Investigation Division continue to take the lead in reviewing and revising the Death Investigation Protocol as needed, the most recent involving the death of individuals while in police custody. All members of the Investigation Division routinely work with a variety of other state agencies in all three branches of government on investigations and other matters. The Chief of the Investigation Division represents the Attorney General on and is the current chair of the Maine Criminal Justice Academy Board of Trustees. The Chief also represents the Attorney General and is the current chair of the Maine Criminal Justice Information System.

Attorneys from the Criminal Division serve on the Criminal Law Advisory Committee, the Advisory Committee on Criminal Rules and the Advisory Committee on Rules of Evidence.

The attorneys in the Criminal Division, the Financial Crimes Division and the Investigations Division provide advice and assistance and collaboration to the eight District Attorneys on a daily basis, as well as the Office of the United States Attorney.

Office of the Chief Medical Examiner – the OCME works closely with the Maine Department of Public Safety (including Maine State Police, Maine Drug Enforcement Agency) and various law enforcement agencies across the state; provides lectures to the Criminal Justice Academy; works with DHHS, especially Vital Records; the Maine Emergency Management Agency; the federal Drug Enforcement Agency; New England HIDTA; Federal Aviation Administration; and the Consumer Product Safety Commission.

Consumer Protection - Staff of the Consumer Protection Division work with the NAAG Antitrust Task Force and its various subcommittees. In addition, the Division works with the Federal Trade Commission and the Department of Justice on antitrust investigations on an ad hoc basis.

The Tobacco Committee is a part of NAAG that oversees tobacco Master Settlement Agreement matters. Members of the Office have served on several subcommittees, including the Enforcement Committee, which oversees enforcement of the public health provisions of the MSA.

Other Work - Members of the Office serve on several Advisory Committees to the Supreme Judicial Court not mentioned above, including the Advisory Committees on Civil Rules, and Professional Ethics; the Maine State Bar Association Continuing Legal Education Committee;

and in the area of domestic violence, Project Safe Neighborhoods Task Force (with the U.S. Attorney's Office) and the Maine Commission on Domestic and Sexual Abuse.

H. Constituencies Served by the Agency

Constituencies Served by the Agency or Program

Constituencies Served by the Agency or Program

The constitutional office of Attorney General is charged with representing the public interest, through a variety of activities. The Office aids the victims of crime by enforcing criminal laws in the areas of homicides, securities and other white collar crimes, as well as supporting the Victims' Compensation and Sexual Assault Forensic Examiner programs.

The Office provides legal counsel and representation to the various departments and agencies of State government in many ways: providing legal advice, defending agencies and their officers and employees when sued, and bringing enforcement actions in the name of the agency and the State of Maine. The Office also assists agencies in the conduct of a myriad of administrative proceedings, and defends their decisions on appeal. Finally, the Attorney General provides legal advice to the Legislature and its committees upon request.

For many Maine citizens, the Consumer Mediation program is the face of the Office, as it provides direct assistance to consumers by attempting to mediate their complaints with businesses. As noted in the Programs section of this report (tab B), during the 2010-2011 fiscal year, 951 claims were mediated with a 63% resolution rate resulting in the recovery of \$486,307.00 for Maine consumers. The Attorney General's website is also a source of information and assistance to Maine citizens, providing a wealth of information and resources for victims of crime, for senior citizens, for people concerned about health issues, and for those looking for information on legal issues affecting consumers.

In all of this work the Attorney General represents, in a larger sense, the people of the State of Maine. The Attorney General and all of his staff are committed to the principle that fairness and justice for the people of Maine should be the foundation for the work of the Office.

I. Alternative Delivery Systems

Alternative Delivery Systems

Section 956(2)(I) asks for a summary of efforts regarding the use of alternative delivery systems, including privatization, in meeting agency goals and objectives.

At the present time there do not appear to be alternative delivery systems that could provide the same level of high-quality, cost-effective legal services now provided by the Office of Attorney General. The most logical alternative, securing legal assistance from outside counsel in the private sector, does not appear to be cost-effective in that the average cost of outside counsel⁶ is in the \$200 per hour range, while the average cost per assistant attorney general hour is approximately \$64 per hour.⁷

The Office also is “lean” on support staff. At the present time the ratio of support staff to attorneys is approximately 3.5 attorneys for every legal/senior legal secretary. While the Office cannot cite a study, it is the observation of those attorneys coming to the Office from the private sector that the common ratio in the private sector is two to one.

Finally, Office administration is similarly lean. The Office of Attorney General has a total budget of approximately \$22 million per year, and must look to approximately sixty different funding sources. The Office must provide human resource services to 192 employees of the Office, and must provide payroll and benefit services to these employees and to the District Attorneys (eight) and the Assistant District Attorneys (77) of this state. Finally, it must deliver a full range of computer technical support to over 200 computers in four offices statewide. It does all of this, and more, with an administrative staff of seven: One Chief; one Personnel Manager; one Accountant III; two IT personnel; and two Administrative Assistants. The salaries of these seven staff members represents only 2.5% of the personnel in the Office, and only 2.5% of the salary costs of the office.

⁶ The Attorney General, pursuant to 5 MRSA §191, must approve all requests by state agencies for outside counsel. Outside counsel is sometimes required when the Attorney General has a conflict in providing representation or does not have the necessary expertise (such as providing complicated bankruptcy legal advice).

⁷ This includes attorney salaries, salaries of supervisors support staff salaries, and estimated ongoing overhead costs.

J. Emerging Issues

Emerging Issues

Significant Growth of Health Care Legal Needs: There has been tremendous growth in the area of health care law, which affects several areas of our practice. The Office has provided legal advice state agencies and the Governor's Office regarding compliance with the Affordable Care Act, and the "maintenance of effort" requirement. Recently, we provided advice to clients, the Governor's Office, and the Legislature regarding the legal implications of initiatives to reduce or eliminate state and/or federal welfare programs, and reduce or eliminate certain MaineCare services. We anticipate that there will be more CMS and OIG audits of the MaineCare program, which will require significant legal representation. Over the past several years, we have represented DHHS in a number of complex health care receivership matters, including the first receivership of a hospital in Maine and is currently advising DHHS regarding termination of those receiverships. The number of legal issues regarding medical marijuana has increased in tandem with the developing tension between state law and federal law. Additional emerging issues include the state's role in the development and maintenance of a statewide electronic health care information exchange and the state's compliance with federal requirements to enter into contingency fee contracts for audits of MaineCare providers. Mergers and other new business arrangements of health care providers may require licensing as well as review for adverse effects on compensation. The growing need for experienced legal counsel in the health care area will continue.

Legal Work Required by Non-Paying Clients: An issue of growing concern for the OAG is the amount of legal work performed for non-paying clients. The Mixed Martial Arts Authority and the Maine Commission on Indigent Legal Services are examples of client accounts where the amount of hourly resources required has not or will not be matched by incoming revenues. Although work for the MCILS has decreased considerably, projections of attorney work for the MMAA will increase. Other such examples exist within the office. Without a mechanism to adjust payment to more closely reflect resource allocation within the office, the ability to meet demand for legal services and provide fair compensation for services rendered will be negatively impacted.

Staff Retention: Attorneys in all divisions of OAG have not received any pay increase for an extended period of time. On the contrary, paychecks have actually gotten smaller due to increased charges for benefits. The goal of attracting and retaining the best legal talent to represent the people of Maine becomes increasingly difficult as morale of committed staff declines and non-competitive salaries limit the pool of potential applicants.

Freedom of Access Requests: The amount of time allocated to advising agencies on, and otherwise dealing with, broad Freedom of Access requests has significantly increased. Part of this is due to the demands associated with retaining, searching and producing e-mails that may now date back years. The administrative burden on understaffed agencies to fulfill these requests in a timely manner is becoming a serious issue. The cost of retaining documents in electronic format is significant, given the current levels of retention.

Complexity of Criminal Litigation: The potential availability of technological improvements to investigate and solve criminal cases is both a curse and a blessing. Sources such as "Facebook," "You Tube" and similar sites, as well as the fact that so many people have cell phones or other digital devices, provide a wealth of investigative information. That material, however, is

voluminous and it is a highly labor-intensive effort to collect, analyze and organize that volume of material for easy understanding by a jury. The complexity of this task makes it a challenge to investigate and prosecute high-stakes homicide cases with no increase in staff. The Criminal Division does not have, and has never had, trial assistants or IT personnel to assist in the organization and presentation of complex trial evidence.

Related to this issue is the fact that homicide cases are never really over. As DNA technology continues to become ever more sensitive, convicted defendants are utilizing Maine's post-conviction DNA law to seek additional testing and a potential new trial. The result is that there is never complete closure for many of the victims' families because the cases are constantly being litigated.

Gaming Regulation: At the time of our last report in 2004, Hollywood Slots in Bangor was the only racino authorized in Maine. Since that time, a casino in Oxford County has been authorized. This increase in gaming activity in Maine requires the attention of a full-time assistant attorney general position. Should the law for gaming in Maine change to increase the number of locations or regulation in Maine, the demands on the OAG will increase significantly.

Unsolved Homicides: With improved technology and continued advancements in DNA science and testing, we expect that even greater efforts will be devoted to trying to solve so-called "cold" homicide cases. The Criminal Division working in conjunction with the Maine State Police, the Portland Police and the Bangor Police have already had a number of successful investigations and prosecutions of previously unsolved homicide cases, and this trend is likely to continue. These cases, however, are labor-intensive and require a significant time and resource commitment.

Office of the Chief Medical Examiner costs: The rapidly rising costs of toxicology and other laboratory tests that must be sent out to independent laboratories are severely straining the budget of the Office of the Chief Medical Examiner. Additionally, the limited reimbursements that the Office can provide to funeral homes for transportation of decedents to and from the Office for autopsies is causing fewer and fewer funeral homes around the state to be willing to provide this service. This is rapidly becoming a critical problem.

Funding for the Victims' Compensation Program: The financial expenditures for the Victims' Compensation Program exceeded revenues for the past three years. Deficits for FY 2009, FY2010 and FY2011 equal \$72,713, \$251,216 and \$179,909, respectively. There are multiple reasons for this trend including less revenue received from the courts by way of the victim's compensation fee, payments for forensic examinations made from the fund and higher awards to eligible victims. A long-term funding solution is needed to maintain the viability of this program.

Prescription Drug Abuse: The epidemic of prescription drug abuse is a rapidly growing and wide-reaching problem for the people of the State of Maine. Prescription drug misuse, diversion and abuse create a major public health and public safety crisis that drastically affects many of the areas in which the OAG works. While no one agency, system or profession is solely responsible for addressing this problem, the OAG is committed to providing leadership in the search for and implementation of solutions. In October 2011, the OAG sponsored a Prescription Drug Abuse Summit that brought together stakeholders from across Maine. A task force is being convened to carry forth the action plan identified by the Summit work groups and develop a coordinated

response that will ensure access for the legitimate use of these medications and minimize the risks they pose.

K. Information Requested

Other Information Requested by the Committee of Jurisdiction

At the time of publication no request had been made by the Judiciary Committee for other information. The Office will promptly respond to any requests for additional information and will amend this document accordingly.

L. Comparison of Related Federal/State Laws and Regulations

Comparison of Related Federal Laws to the State Laws Governing the Agency or Program

This requirement of §956 does not seem to be applicable to the Office of the Attorney General.
Federal laws in common use within the Office are found in Tab O.

M. Agency Policies for Collecting Personal Information

Agency Policies for Collecting, Managing and Using Personal Information

This requirement of §956 does not seem to be applicable to the Office of the Attorney General as it does not collect personal information in order to discharge its responsibilities to the State.

N. Required Reporting by Public

Paperwork to be Filed with the Agency by the Public

At the present time there is no report, application or other paperwork required to be filed by members of the public with the Office of the Attorney General

O. Appendix

Statutory References and Duties of the Attorney General Federal laws

Statutory References and Duties of the Attorney General

1 M.R.S.A. § 8

Before transfer of legislative jurisdiction over land areas to the United States, Governor, Attorney General must transmit comments and recommendations to the Legislature.

1 M.R.S.A. § 353

With the assistance of the Secretary of State, Attorney General shall prepare explanation of proposed amendments to the Constitution and statewide referendum for publication.

1 M.R.S.A. § 1006

Shall assist the Ethics Commission when called upon for aid.

1 M.R.S.A. § 1008

Participate in an ethics seminar for Legislators before the convening of the Legislature, in every even-numbered year and provide each Legislator with a bound compilation of the laws of this State pertaining to legislative ethics and conduct.

1 M.R.S.A. § 1013(F)

Ethics Commission findings regarding possible criminal conduct by legislator referred to the Attorney General.

1 M.R.S.A. § 1019

Ethics Commission findings of fact regarding possible willful filing of a false statement by a Legislator referred to the Attorney General.

3 M.R.S.A. § 322

Ethics Commission may request the Attorney General to investigate complaints regarding violations of Lobbyist disclosure requirements.

3 M.R.S.A. § 736

Representation of the Maine Legislative Retirement System.

3 M.R.S.A. § 994

If the Joint legislative committee on program evaluation and government accountability matters determines that there is probable cause that a witness has committed perjury by testifying falsely, the committee may direct the Attorney General to institute legal proceedings as provided by law.

4 M.R.S.A. § 454

Criminal Division attorneys of the Office made members of Maine Criminal Justice Sentencing Institute.

4 M.R.S.A. §§ 808-809

Investigation and enforcement relative to the unauthorized practice of law.

5 M.R.S.A. §§ 191-205

General duties and responsibilities of the Attorney General including the obligation to appear on behalf of the State, the head of any department or institution in all civil actions in which the state is a party.

4 M.R.S.A. § 1236

Representation of the Maine Judicial Retirement System.

5 M.R.S.A. § 95-A

Petition the Superior Court on behalf of the State Archivist for the recovery of public records.

5 M.R.S.A. § 126

Shall prosecute the State Treasurer for any personal use of public moneys.

5 M.R.S.A. § 138

Duties relative to the permanent trust funds of the State and guaranty funds required by statute.

5 M.R.S.A. §§ 205-A - 214

Actions against unfair competition and unfair acts in trade or commerce.

5 M.R.S.A. § 1504

Certification to State Controller of accounts receivable as impractical of realization.

5 M.R.S.A. § 1509

Items of income or taxes owed to the State which are not paid within 90 days referred to the Attorney General for collection.

5 M.R.S.A. § 1541(9)

Bureau of Accounts and Control report for such action, civil or criminal, all facts showing illegality in the expenditure of public moneys or the misappropriation of public properties.

5 M.R.S.A. § 1728-A

Approval of property and liability insurance arrangements; representation in claims for personal injury and property damage against the State, and in claims against 3rd parties in all cases in which the State may be subrogated to the rights of injured employees or where damage to state property may have resulted from the negligence of a 3rd party.

5 M.R.S.A. § 1816-A

Written approval of contracts for legal counsel required.

5 M.R.S.A. § 3307-D

Recovery of penalties for violations of State petroleum set aside statute.

5 M.R.S.A. § 3358

Membership on Maine Criminal Justice Commission.

5 M.R.S.A. §§ 3360 - 3360-M

Victims' Compensation Board - duties regarding appointment of members, payment of claims and administration of fund.

5 M.R.S.A. §§ 3360-N - 3360-P

Sexual Assault Forensic Examiner Advisory Board - administrative oversight for the board's policies and responsibilities; when necessary employ personnel necessary to carry out the purposes of the board; lease, rent or acquire adequate equipment and facilities; accept federal funds or grants that are available to carry out or implement the board's objectives; and provide technical assistance and training to sexual assault forensic examiners.

5 M.R.S.A. § 4681

Civil Rights Act, prosecution of violations of constitutional rights.

5 M.R.S.A. § 8056

Review and approval of agency rules for form and legality.

5 M.R.S.A. § 9060

Approval of agency subpoenas for certain administrative proceedings.

5 M.R.S.A. § 17102

Representation of the Maine State Retirement System.

7 M.R.S.A. § 2213

Enforcement of State Horticulturist orders for proper treatment or destruction of infested or diseased plants.

8 M.R.S.A. § 282

Representation of State Harness Racing Commission and enforcement of harness racing law.

9-A M.R.S.A. § 6-104

Enforcement of the Maine Consumer Credit Code.

9-B M.R.S.A. § 228

Representation of the Superintendent of Banking and enforcement of banking laws and regulations.

10 M.R.S.A. § 1015

Legal services relative to the implementation of a student financial assistance program.

10 M.R.S.A. §§ 1104, 1107

Enforcement of antitrust and monopoly laws.

10 M.R.S.A. § 1169

Promulgate rules regarding state-certified arbitration proceedings and arrange for arbitration of consumer complaints dealing with new motor vehicles.

10 M.R.S.A. §§ 1208-1209

Investigation of unfair sales practices involving motor fuel and filing of written reports by wholesalers regarding certain motor fuel sales.

10 M.R.S.A. § 1273

Enforcement of law for protection of social security numbers.

10 M.R.S.A. § 1328

Enforcement of the Fair Credit Reporting Act.

10 M.R.S.A. §§ 1347 – 1350-B

Regulatory, enforcement and educational responsibilities in area of security breaches.

10 M.R.S.A. § 1499

Enforcement of telephone solicitation restrictions.

10 M.R.S.A. § 1660

Enforcement of chapter regulating sales and labeling of internal combustion engine fuels, lubricating oils and other like products.

10 M.R.S.A. §§ 1671-1682

Duties relative to the Petroleum Market Share Act including an annual report to the Legislature.

10 M.R.S.A. §§ 1704, 2368, 2506, 2655

Enforcement of various weights and measures types of provisions.

10 M.R.S.A. § 8003-C

Boards and commissions, prosecute unlicensed practice.

10 M.R.S.A. § 9011

Enforcement of violations of Manufactured Housing Act.

12 M.R.S.A. § 901

Member of Baxter State Park Authority.

12 M.R.S.A. § 6431

Issue certain written certifications relative to lobster measurement and minimum size.

12 M.R.S.A. § 8003

Investigate and approve the title to lands acquired for state forest purposes or as natural areas.

12 M.R.S.A. § 8427

Enforce payment of the spruce budworm program excise tax.

13 M.R.S.A. § 3061

Filing of actions for the appointment of trustees for abandoned religious property.

13-A, 13-B, 13-C M.R.S.A.

Corporations.

14 M.R.S.A. § 3138

Judicial enforcement of administrative orders.

14 M.R.S.A. § 5963

In declaratory judgment actions, if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General shall be served with a copy of the proceeding and be entitled to be heard.

14 M.R.S.A. § 7202

When directed by the Legislature or Governor, file any information for the recovery of certain lands and grants.

14 M.R.S.A. § 8107

Copies of notices of tort claim filed with the Attorney General.

14 M.R.S.A. § 8109

Approve settlement of tort claims against the State.

15 M.R.S.A. § 104-A

Role in proceedings for release and discharge of committed persons acquitted in criminal cases on basis of mental disease or defect.

15 M.R.S.A. §§ 204-223

Responsibilities relative to extradition matters. [CHECK]

15 M.R.S.A. § 605

Shall adopt standards for the operation of arrest warrant repositories and authorize warrants to be entered in the National Crime Information Center data base.

15 M.R.S.A. § 710

Any communications common carrier shall promptly report to the Attorney General illegal intercepts of wire or oral communications.

15 M.R.S.A. § 1462

Receive notice of any summons for a prisoner to testify in another state.

15 M.R.S.A. § 2115-A

Written approval of state's appeals in criminal cases.

15 M.R.S.A. § 2116

Role in state court proceedings after a federal court finding that prisoner's constitutional rights have been violated.

15 M.R.S.A. § 5822

Duties relative to forfeiture proceedings and adoption of rules providing standards for prosecution, settlement, and transfer of forfeited property.

16 M.R.S.A. § 633

Member of the Maine Criminal Justice Information System Policy Board

17 M.R.S.A. § 317-A

Enforce subpoenas issued by Chief of MSP in beano/bingo license actions or investigations.

17 M.R.S.A. § 343-A

Enforce subpoenas issued by Chief of MSP in games of chance license actions or investigations.

17 M.R.S.A. § 2701-B

Improper manure handling cases referred in writing; may file an action to abate a nuisance.

17 M.R.S.A. § 2805

Insect infestation constituting public nuisance referred and enforcement of failure to adopt best management practices when required.

17 M.R.S.A. § 3860

Prosecute criminally or civilly upon complaint of a person being denied access to a great pond, any person who denies such right of access or egress.

17-A M.R.S.A. § 958

File complaint to enjoin formation of any lottery or selling or otherwise distributing tickets, certificates, or shares.

17-A M.R.S.A. § 1352

Appoint members of the Criminal Law Advisory Commission.

19-A M.R.S.A. § 2103

Enforcement of child support obligations.

19-A M.R.S.A. § 4012

Shall develop a written policy regarding prosecution of domestic abuse cases under the provisions of Title 17-A.

19-A M.R.S.A. § 4013

Membership on Maine Commission on Domestic and the Sexual Abuse and Domestic Abuse Homicide Review Panel.

20-A M.R.S.A. § 6801-A

Enforcement of educational reporting, program or other requirements if a school administrative unit is not in compliance.

20-A M.R.S.A. § 7206

Failure to comply with requirements for serving exceptional students referred for action.

21-A M.R.S.A. § 33

Designate a Deputy Attorney General or an Assistant Attorney General to investigate and prosecute alleged violations of the election laws.

21-A M.R.S.A. § 1003

Shall aid in any investigation, provide advice, examine any witnesses or otherwise assist the Ethics Commission in the performance of its duties upon request of the commission and prosecute violations of law.

22 M.R.S.A. § 13

Referral of fraud or attempted fraud cases by Human Services Fraud Investigation Unit.

22 M.R.S.A. § 14

Institute and prosecute legal proceedings against 3rd parties liable for medical care rendered to Medicaid assistance recipients.

22 M.R.S.A. § 349

Upon the request of DHS [DHHS], seek injunction or other appropriate action for any project for which a certificate of need as required by this chapter has not been obtained.

22 M.R.S.A. §§ 688, 690

Duties under the Radiation Protection Act.

22 M.R.S.A. § 808

Approve subpoenas requiring persons to disclose or provide to the DHS [DHHS] information or records in their possession that are relevant to an investigation of a report of a public health threat.

22 M.R.S.A. § 1580-I

Tobacco Product Manufacturers Act; civil action against any tobacco product manufacturer failing to place required funds into escrow.

22 M.R.S.A. § 1580-A(4-A)

Enforcement of statute governing smoking in places of employment.

22 M.R.S.A. § 1711-C

Confidentiality of health care information; enjoin intentional and unlawful disclosure of health care information.

22 M.R.S.A. § 1715

Enforcement of access to health care requirements applicable to certain health care providers.

22 M.R.S.A. § 1717(5)-(6)

Enforcement of registration requirements for personal health care and placement agencies.

22 M.R.S.A. §§ 1841-1852

Duties under Hospital and Health Care Provider Cooperation Act.

22 M.R.S.A. § 2039

Enforcement of Maine Medical Laboratory Act.

22 M.R.S.A. § 2054

Approve surety bonds required for members and certain staff of the Maine Health and Higher Educational Facilities Authority.

22 M.R.S.A. § 2139

Enforcement of background check requirements for temporary nurse agencies.

22 M.R.S.A. §§ 2619-2620

Enforcement of safe drinking water requirements.

22 M.R.S.A. § 2697

Enforcement of prohibition against profiteering in prescription drugs.

22 M.R.S.A. §§ 3021-3035

Duties of the Office of Chief Medical Examiner within the Office.

22 M.R.S.A. § 3184

Recovery of illegal payments of aid to needy persons.

22 M.R.S.A. § 3280

Actions to compel certain relatives to contribute to the support of recipients of state supplemental income.

22 M.R.S.A. § 4004

Membership on child death and serious injury review panel.

22 M.R.S.A. § 4087-A

Prosecutions for obstruction or hindrance of child welfare services ombudsman duties.

22 M.R.S.A. § 4088(3)

Enforcement of out-of-home abuse and neglect matters.

22 M.R.S.A. § 7702-B

Enforcement in matters involving operation without a license.

22 M.R.S.A. § 8703

Shall furnish legal assistance, counsel or advice to the Maine Health Data Organization.

22 M.R.S.A. § 8755

Enforcement of sentinel events reporting requirements.

23 M.R.S.A. § 1965

Approval of Maine Turnpike security bonds.

23 M.R.S.A. § 7002

Enforcement of penalty against railroad corporations for disconnected cars left on tracks.

23 M.R.S.A. § 7302

Enforcement of penalty for running of passenger trains without a certificate of safety.

24 M.R.S.A. § 2301

Participation in proceedings before the Superintendent of Insurance involving conversions of nonprofit hospital service plans, nonprofit medical service plans and nonprofit health care plans.

24 M.R.S.A. § 2321

Participation in rate filings before the Superintendent of Insurance on individual subscriber and membership contracts.

24-A M.R.S.A. §§ 12-A, 214

Enforcement of violations of the insurance laws, rule adopted by the superintendent or lawful orders of the Superintendent of Insurance.

24-A M.R.S. §§ 3307, 3310, 3481, 3489

Duties relative to certificate of organization for insurers, amendments, mergers and consolidations.

24-A M.R.S. § 4360

Commencement of delinquency proceeding against insurer.

25 M.R.S.A. § 2003

Develop model forms for applications and permits for concealed firearms.

25 M.R.S.A. § 2704

Enforcement of physical disability design and construction requirements for public buildings or facilities.

25 M.R.S.A. § 2802

Serve on the Board of trustees for the Maine Criminal Justice Academy.

25 M.R.S.A. § 2806

Enforce certification requirements of law enforcement officers.

25 M.R.S.A. § 2954

Serve on Maine Drug Enforcement Agency Advisory Board.

25 M.R.S.A. § 2955

Shall appoint one assistant attorney general as a full-time coordinator of drug prosecution matters who is responsible to coordinate the efforts of each of the attorneys assigned to the Maine Drug Enforcement Agency.

26 M.R.S.A. § 53

Enforcement of Bureau of Labor Standards violations.

26 M.R.S.A. § 588

Enforcement of housing standards for agricultural labor.

26 M.R.S.A. §§ 602, 613, 671

Enforcement of employment practice laws.

26 M.R.S.A. § 777

Approve form for minor work permits.

26 M.R.S.A. § 1082

Represent the Department of Labor, the Unemployment Compensation Commission and the State in court action relating to unemployment compensation.

27 M.R.S.A. §§ 375, 376

Enforcement of prohibitions against unlawful excavation at archaeological sites, sale of state-owned artifacts and removal of state-owned artifacts from the state.

28-A M.R.S.A. § 2519

Member of Server Education Advisory Committee which determines specific criteria that an alcohol server education course must contain to receive approval.

29-A M.R.S.A. § 2251

Designate an assistant attorney general familiar with federal commercial vehicle laws and regulations to serve as a resource to any district attorney who initiates a prosecution arising from an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person.

29-A M.R.S.A. § 242

Adopt rules in accordance with Title 5, chapter 375, for the disposition to state, county and municipal agencies of forfeited motor vehicles.

30-A M.R.S.A. § 257

File complaint for removal of any district attorney from office.

30-A M.R.S.A. § 372

Civil action to recover forfeiture if sheriff fails to give required security.

30-A M.R.S.A. § 3010

Receive notices and certifications regarding quality of service to subscribers of cable services.

30-A M.R.S.A. § 5951

Approve surety bonds required for commissioners and executive director of the Maine Municipal Bond Bank.

30-A M.R.S.A. § 6111

If Board of Emergency Municipal Finance takes control of a municipality under certain circumstances and believe that the municipality has incurred debts and obligations in excess of the debt limit fixed by the Constitution of Maine, the Attorney General may bring a complaint in the name of the inhabitants of the municipality in the Superior Court in the county in which the municipality is located against all of the known persons holding any debts or obligations against the inhabitants of the municipality, to have the validity of all the debts and obligations of the municipality determined.

31 M.R.S.A. § 405

Enforce provisions governing use of assumed name by domestic or foreign limited partnerships.

31 M.R.S.A. § 498

Enjoin foreign limited partnerships from doing business without authority.

31 M.R.S.A. § 605

Enforce provisions governing use of assumed name by domestic or foreign limited liability company.

31 M.R.S.A. § 719

Enjoin foreign limited liability company from doing business without authority.

31 M.R.S.A. § 805

Enforce provisions governing use of assumed name by limited liability partnerships or foreign limited liability partnerships.

32 M.R.S.A. § 60-A

Complaints received by an occupational and professional regulatory board regarding that board's administrative procedure must be filed by the board with the Attorney General.

32 M.R.S.A.

Professions and Licensing Boards – disciplinary actions, hearings, consent decrees.

32 M.R.S.A. § 11053

Enforcement of Maine Fair Debt Collection Practices Act.

32 M.R.S.A. § 14511

Door-to-Door Home Repair Transient Sellers; shall prepare a form contract for door-to-door sales, that fully meets the obligations of a transient seller of home repair services and provide these forms at no cost.

32 M.R.S.A. § 14709

Advise on review and approval of waiver of security deposit applications for Door-to-Door Home Repair Transient Sellers.

32 M.R.S.A. §§ 16603, 16508

Enforcement of Revised Maine Securities Act.

33 M.R.S.A. § 608

Actions for removal of Register of Deeds for misconduct or incapacity.

33 M.R.S.A. § 1209

Consultation and review of claims to coastal islands.

33 M.R.S.A. § 1974

Duties relative to the Uniform Unclaimed Property Act.

34-B M.R.S.A. § 1301

The AG chooses a member to serve on the Dorothea Dix Award Committee.

34-B M.R.S.A. § 1931

Two AAGs serve on the Mental Health Homicide, Suicide, Aggravated Assault Review Board.

34-B M.R.S.A. § 5606

Receive reports of violation of the rights of a person receiving services from the Department of Behavioral and Developmental Services.

35-A M.R.S.A. § 115

Aid in Public Utilities Commission investigation of violations of state laws and bring actions on its behalf.

35-A M.R.S.A. § 2904

Approve surety bonds required of the commissioners and executive director of the Maine Public Utility Financing Bank.

35-A M.R.S.A. § 3155

Authorized to intervene before the Public Utilities Commission to protect consumer interests.

35-A M.R.S.A. § 3203

If the Public Utilities Commission believes that any competitive electricity provider or transmission and distribution utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the Commission shall notify the Attorney General who shall promptly institute any actions or proceedings considered appropriate.

35-A M.R.S.A. § 4359

Provisions relating to the decommissioning of nuclear power generating facilities shall be enforced by the Department of the Attorney General, with the cost of enforcement paid from the decommissioning trust fund.

35 M.R.S.A. § 7106

If the Public Utilities Commission believes that any local or intrastate telecommunications carrier has violated any provision of the law for which criminal prosecution is provided and would be in order or any law regarding fraud or consumer protection, the Commission shall notify the Attorney General who shall promptly institute any actions or proceedings considered appropriate.

36 M.R.S.A. § 174

Actions for collection of the taxes imposed by Title 36.

37-B M.R.S.A. § 185

Duty of the Attorney General to defend an officer or enlisted member of the state military forces in civil actions.

38 M.R.S.A. §§ 347-A, 348, 413, 443-A, 444, 570, 1296, 1310-F, 1316-C, 1318-A, 1365

Examples - Enforcement of state's environmental laws.

39-A M.R.S.A. § 355

Provide legal representation for any claim made under this section which establishes the Employment Rehabilitation Fund including the enforcement of an assessment made under subsection 7 or the defense of an employer's appeal of that assessment.

39-A M.R.S.A. § 356

Funding of Supplemental Benefits Fund; enforce payment by civil action against insurers for the amount of the assessment.

Federal Laws

Federal law is important to many state agencies. Below is a list of federal laws that are often referred to by the staff of the Office of Attorney General. The list is not comprehensive, but provides a good idea of the interplay between state programs and federal law.

Office of Chief Medical Examiner: 45 CFR 164.512(g) - Standard: Uses and disclosures about decedents. (1) Coroners and medical examiners. A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.

Child Protection Division: The Adoption and Safe Families Act of 1997 (PL 105-89) ("ASFA"); The Adoption Assistance and Child Welfare Act, 42 USC sec. 622 et seq.; HHS Regulations relating to Title IV-E, 45 CFR sec. 1356.21 et seq.; and the Indian Child Welfare Act, 25 USCS §§1901 et seq.

Child Support Division: Title IV-D of the Social Security Act – 42 U.S.C. §§ 651-669 (1994, Supp. IV 1998 & Supp. IV 1999); The Child Support Recovery Act, as amended by the Deadbeat Parents Punishment Act 18 U.S.C. § 228 (1994 & Supp. V 1999); Federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1778(B) (1994 & Supp. 1999); Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 42 U.S.C. §666 (c) (Supp. V 1999); and the Soldiers and Sailors Relief Act. 50 U.S.C. App. (1990 & Supp. (1993).

Investigation Division: Investigators for this Division utilize federal DEA, FDA and civil rights laws as well as full faith and credit statutes, federal laws pertaining to interstate crimes such as wire or mail fraud, laws regarding use of deadly force by federal officers, certain federal firearms statutes, in particular those dealing with prohibited possession, identity theft laws, federal domestic violence laws, and to a degree the anti-terrorism statutes and Patriot Act provisions.

Litigation Division: Americans with Disabilities Act; Fair Labor Standards Act; the Federal Civil Rights Act; and ERISA.

Financial Crimes and Civil Rights Division/Health Care Crimes Unit: The Medicare and Medicaid Anti-Fraud and Abuse Amendments of 1977, authorized the establishment and funding for State Medicaid Fraud Control Units ("MFCU"), to investigate and prosecute Medicaid provider fraud and patient abuse and neglect in Medicaid funded facilities. *See* 42 U.S.C. Section 1396b(q). *See also*, P. L. 95-142 and P. L. 96-499. In order for States to receive federal funding for their Medicaid Programs it must either certify that they have a MFCU or meet the specific federal requirements that allow a State not to have a Unit. Currently 48 States have a MFCU and the Maine Healthcare Crimes Unit ("HCU") is the designated MFCU for the State of Maine. The MFCU's are operated under a federal grant with a 75 percent rate of federal funding, and oversight of the MFCU's rests with the Office of Inspector General for the Department of Health and Human Services. Accordingly, the HCU activities and functions are governed by

strict federal regulatory and statutory requirements. *See* Title 42 C.F.R. Chapter V, Part 1007 State Medicaid Fraud Control Unit.

Consumer Protection Division: Federal Fair Credit Reporting (in terms of accessing credit information); ECPA - Electronic Communications Privacy Act (in terms of getting information from ISP's and the like); The Sherman Act, 15 USC § 1 *et seq*; Federal Trade Commission Act, 15 USC § 45(a)(1); Telemarketing and Consumer Fraud and Abuse Act, 15 USC §§ 6101 – 6106; and the Telephone Consumer Protection Act, 47 USC §227.

Health and Human Services: HIPAA; Federal Medicaid statutes and regulations; TANF; Food Stamps; Affordable Care Act; and the Immigration and Naturalization Act.