



OFFICE OF THE ATTORNEY GENERAL FY2019

What We Do: Four Core Functions

- **ENFORCE** laws of the State of Vermont
- **DEFEND** State of Vermont laws, policies, employees
- **PRODUCE** revenues
- **PROTECT** Vermont citizens

OFFICE OF THE ATTORNEY GENERAL

Authority of the Attorney General

Title 3 of the Vermont Statutes Annotated

- Section 152 The attorney general may represent the state in all civil and criminal matters as at common law and as allowed by statute. The attorney general shall also have the same authority throughout the state as a state's attorney.
- Section 153 The attorney general shall have the general supervision of criminal prosecutions, shall consult with and advise the state's attorneys in matters relating to the duties of their office, and shall assist them by attending the grand jury in the examination of any cause or in the preparation of indictments and informations when, in his judgment, the interests of the state require it.
- Section 157 The attorney general shall appear for the state in the preparation and trial of all prosecutions for homicide and civil or criminal causes in which the state is a party or is interested when, in his judgment, the interests of the state so require.
- Section 159 The attorney general shall advise the elective and appointive state officers on questions of law relating to their official duties... He shall have general supervision of matters and actions in favor of the state and of those instituted by or against state officers wherein interests of the state are involved and may settle such matters and actions as the interests of the state require.

OFFICE OF THE ATTORNEY GENERAL

Division Highlights

Civil Litigation Division

Defends money claims against the State, State officials and State employees:

- 586 lawsuits were filed against the State, State officials and State employees in 2017, including wrongful death, personal injury, civil rights claims.

Defends lawsuits that challenge State laws and policies:

- Educational Funding Litigation – Defending case brought by students, town, and taxpayers challenging constitutionality of Act 68's system of educational funding.
- *DHMC v. Cohen* Medicaid Reimbursement case – Successfully defended Dartmouth Hitchcock lawsuit in New Hampshire federal court challenging Medicaid reimbursement rates for out-of-state hospital on constitutional grounds.
- Employment policies – *O'Neill*: Defending federal and state court cases against Department of State's Attorneys and Sheriffs claiming that policies violate Equal Pay Act and Vermont Fair Employment Practices Act.
- *Comcast v. Public Utilities Commission* case – Defending federal court appeal and constitutional challenge to terms and conditions of PUC's renewal of Comcast's Certificate of Public Good to provide cable television services in Vermont.

EB-5 Litigation – Prosecuting securities and consumer fraud claims. Defending claims against state employees by EB-5 investors challenging administration and oversight of program.

Criminal Division

Statewide investigation and prosecution of misdemeanors, felonies, public corruption, and other crimes. The following correspond with the period of July 1, 2016 to December 31, 2017.

- Matters handled: Had several hundred pending matters, consisting of prosecutions, prosecution reviews, homicides, investigations, violations of

OFFICE OF THE ATTORNEY GENERAL

Division Highlights

Criminal Division (continued)

- probation, petitions for post-conviction relief, extraditions, committees, public records requests, and other miscellaneous matters.
- Vermont Internet Crimes Against Children (VT-ICAC) Task Force: Administers VT-ICAC grants. Lead agency responsible for operations of the VT-ICAC Task Force. Coordinates investigations amongst all affiliate agencies statewide, including 257 in FY17 (64% increase from FY16). Prosecutes cases arising from peer-to-peer investigations, undercover investigations, and cybertips from the National Center for Missing and Exploited Children. Includes both child pornography charges, luring charges, and sexual assault charges. In September 2017, coordinated Operation Net Guardian, a five-day operation that resulted in the arrest of nine individuals for luring children to engage in sexual conduct and 11 additional investigations. VT-ICAC also provided 335 presentations to approximately 6,732 attendees at various events.
 - Homicide/manslaughter: Involved in approximately one dozen homicide investigations, prosecutions, appeals, and collateral proceedings. Including *State of Vermont v. Jody Herring*. Provided an Assistant Attorney General at short notice to assist in the trial in *State of Vermont v. Robin O'Neil*.
 - Sex crimes: Involved in approximately 20 sex crime prosecutions, prosecution reviews, and collateral proceedings. Includes multi-county litigation against Google in three child sexual exploitation cases in which Google refused to comply with Vermont search warrants.
 - Handled 16 appeals to the Vermont Supreme Court.

Statewide enforcement of Medicaid Fraud, patient abuse laws, and Vermont's False Claims Act. The following also correspond with the period of July 1, 2016 to December 31, 2017.

- 72 opened investigations.
- Filed 9 criminal cases and convicted 15 criminal defendants.
- Obtained over \$9,000,000 in judgements.

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Division Highlights

Environmental Protection Division

Enforces clean air, clean water, hazardous waste and other environmental laws.

Actions include:

- PFOA contamination in Bennington. Working with ANR technical and legal teams, Division attorneys negotiated on behalf of the State with Saint-Gobain Performance Plastics to address the contamination of drinking water in Bennington due to the release of the chemical PFOA from Saint-Gobain owned facilities. Final settlement called for the funding of a water line extension for approximately 200 homes in a portion of Bennington and North Bennington. The estimated cost of the water line extension is approximately \$20 million. In addition, Saint-Gobain committed to completing an expedited investigation in the remainder of the impacted area surrounding Bennington. This expedited investigation will inform a resolution for that area. The settlement with Saint-Gobain also included a payment of \$1.8 million to the State of Vermont for past state costs incurred during the response to PFOA contamination;
- Volkswagen. Settled the State's environmental claims against Volkswagen for a penalty of \$4.2 million. Division attorneys worked as a part of a 10-state coalition to settle with Volkswagen and resolve claims relating to Volkswagen's sale and lease of diesel automobiles that were fitted with illegal "defeat devices." The devices concealed the release of harmful pollutants in excess of Vermont's vehicle emission standards. Division attorneys played a large role on the multi-state team and their work resulted in a greater dollar figure total coming to Vermont;
- Following a successful 2016 Vermont Supreme Court ruling reinstating findings by the Department of Forest, Parks and Recreation against a northeast kingdom logging company, Division attorneys negotiated a \$375,000 settlement on remand to resolve claims of overharvesting in violation of the logging company's forest management plan;
- Cost recovery action against a property owner resulting in a judgment of \$1.8 million in clean-up costs and damages to the State following the property owner's failure to remediate hazardous chemicals found at his Rutland property;
- Agricultural Water Quality enforcement cases in collaboration with, and on behalf of, the Agency of Natural Resources and Agency of Agriculture;

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Division Highlights

Environmental Protection Division (continued)

- Negotiation, under terms of a prior settlement, payment of costs to the State totaling \$523,250.78 for state petroleum cleanup fund (PCF) monies spent in connection with investigation, monitoring, and remediation expenses incurred by the State at a contaminated site in Hinesburg; and
- \$8,986,791 in awards, penalties and recoveries in FY17 and 2018 to date.

Vermont Yankee and Nuclear Matters

- The Division continued its role representing the State on post-closure issues relating to the Vermont Yankee nuclear power plant in Vernon, providing legal advice to State agencies as needed.
- Division attorneys represented the State before the Nuclear Regulatory Commission (NRC) to request a hearing before the Commission on the proposed sale of Vermont Yankee from Entergy to NorthStar.
- Division intervened as a party in the parallel proceeding on the sale of Vermont Yankee before the Public Utility Commission to ensure that the interests of Vermonters are protected in the transaction.
- The Division, along with four other state agencies (Department of Public Service, Agency of Natural Resources, Division of Emergency Management and Homeland Security, and Department of Health) led a coalition of four northeastern states in filing comments before the NRC on the Commission's proposed rules for decommissioning nuclear power plants.
- The Division also filed written comments for the State with the NRC on Entergy's use of the Vermont Yankee Decommissioning Trust Fund to ensure that the fund was only used for cleanup of the Vermont Yankee site.

General Counsel and Administrative Law Division

- Provides legal counsel to constitutional officers, agencies, departments.
- Litigates Labor Board, Human Rights Commission, Liquor Control and Medical Board cases (GCAL handled 730 administrative cases in 2017).
- Negotiates and drafts complex investment and IT contracts; for example, contracts for \$4,000,000,000 in pension investments.

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Division Highlights

General Counsel and Administrative Law Division (continued)

- Reviewed 1,940 contracts and amendments in FY17 for compliance with state law.
- Advises state agencies on routine and complex access to records, open meetings, and administrative law matters. The AG's Office itself received 115 formal records requests in 2017 – a 50% increase from the 76 requests received in 2016.
- Defended lawsuits seeking more than \$4,000,000 in property tax reductions for hydroelectric plants on the Connecticut and Deerfield Rivers
- Supervises the statewide Court Diversion and Pretrial Services programs responsible for more than 5,100 referrals in FY17.

Human Services Division

- Provides legal representation to the Agency of Human Services and its Departments in civil and administrative litigation including termination of parental rights trials and appeals, fair hearings in benefits cases, inmate grievances, contract disputes, competency, hospitalization and medication cases; hospital tax appeals.
- Reviews Agency and Department contracts and grants.
- Advises on legal matters including licensing and rulemaking, legislation, access to records requests and privacy and HIPAA matters.
- Division Caseload SFY17:

Department for Children and Families - Economic Services Division	
Administrative Hearings	256
Civil Litigation	3
Supreme Court Appeals	5
Department for Children and Families – Family Services Division	
Termination of Parental Rights (Civil Litigation)	292
Supreme Court Appeals	54
Administrative Appeals before the Human Services Board	78
Probate Guardianship	16
Woodside Juvenile Rehabilitation Center Litigation	17

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Division Highlights

Human Services Division (continued)

Department of Corrections	
Litigation	435
Supreme Court Appeals	12
Department of Disabilities, Aging and Independent Living	
Civil Litigation	176
Department of Health	
Contracts Reviewed	306
Public Records Requests	7
Human Services Board Administrative Appeals	7
Internal Commissioner Appeals	46
Department of Mental Health	
Applications for Involuntary Treatment	798
Applications for Continued Treatment	333
Applications for Voluntary Medication	71
Forensic Commitments	100
Department of Vermont Health Access	
Administrative Hearings	324
Civil Litigation	55
Contracts/Grants	118

Public Protection Division

- Civil Rights Unit: Protecting Vermont values; Enforcing employment discrimination, hate crime, and civil rights laws. Returned 572 calls to Vermonters in distress.
- Three-prong strategy to protect vulnerable communities in Vermont:
 - Litigation: Joined lawsuits around the country opposing so-called “travel bans”, DACA, and other federal overreach targeting immigrant populations
 - Legislation: Act 5 (protecting religious and other protected characteristics of Vermonters from compulsory federal registration) signed into law; partnering with lawmakers and others on sexual harassment and other employment and civil rights legislation; completed report and recommendations to legislature on data broker legislation.

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Division Highlights

Public Protection Division (continued)

- Community Based: Established immigration Task Force; created guide for all 251 towns and cities on immigration policy; civil rights presentations to hundreds of Vermont youth throughout the state.
- Enforces consumer protection and antitrust laws with financial recoveries to the State of \$5,843,264 in FY16 and FY17 YTD (July to December). In addition to the total recoveries to the State; restitution to consumers was more than \$1.65 million. The AGO continues to provide relief for consumers across various industries, for example:
 - Data Breach Notification: \$964,000
 - Wire Transfers: \$400,000
 - False Claims: \$1 million to Vermont
 - Auto: \$1 million to Vermont
- Consumer Assistance Program: Over 15,000 contacts assisting Vermonters; launched “Small Business Initiative” reaching almost 100 small businesses through 50 events as well as outreach, presentations, and general assistance; launched Scam Alert system in partnership with DPS and Scam Busters outreach tour with utilities and major retailers. 2,723 Vermonters have signed up for Scam Alert notifications.

Solicitor General and Appellate Unit

- *Supervision and assistance across all divisions*: In SFY17, the AGO opened 123 appeals, 111 in the Vermont Supreme Court and 12 in federal courts. In addition to handling many of the office’s appeals itself, the Unit has provided substantial input and supervision for appeals across most divisions of the office, including tax, mental health, environmental and Act 250, corrections, criminal and civil defense. Some significant recent or pending appeals include:
TransCanada v. Town of Newbury – Vermont Supreme Court rejected challenge to valuation of flow easements associated with Wilder Dam, which would have reduced property tax value from \$1.5 million to \$9,500.

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Division Highlights

Solicitor General and Appellate Unit (continued)

Concerned Neighbors v. Green Mountain Care Board - VSC rejected challenge to GMCB's ability to delegate functions to staff members.

Toensing v. Attorney General – VSC considered the scope of the Public Records Act and its applicability to personal emails of state employees.

State v. VanBuren – challenge to 13 V.S.A. § 2606, which criminalizes distribution of nonconsensual pornography (pending at VSC).

Dep't of Taxes v. Montani – consolidated appeal of four cases in which trial court imposed a statute-of-limitations on Tax Department's ability to assess tax liability on non-filers (pending at VSC).

Schenck v. State – filed amicus brief defending constitutionality of 13 V.S.A. § 1026(a)(1), a provision of the disorderly conduct statute, and 14 V.S.A. § 1455, the hate crime enhancement statute (pending at VSC).

WOTUS litigation – Vermont, along with a number of other states, is defending the EPA's 2014 Clean Water Rule, which defines “the Waters of the United States,” for purposes of the federal Clean Water Act (currently pending at U.S. Supreme Court).

- *Child protection appeals*: In FY17, the office opened more than 50 appeals in child protection cases (TPR and CHINS cases). The Appellate Unit oversees all of these cases – the largest part of the appellate docket – to assure that the cases are adequately staffed when our Family Services attorneys are over-burdened. In addition to reviewing all child protection appeals, the appellate unit attorneys frequently handle these cases or assign them to AAGs in other divisions to relieve burdens on the Family Services unit.
- *Amicus participation*: The Unit coordinates amicus participation at the U.S. Supreme Court and other federal courts. Vermont has participated in amicus briefs supporting environmental programs and defending constitutional rights. The unit also responds to requests for briefing from the Vermont Supreme Court and files briefs in federal courts when cases between private parties that present important questions of Vermont law.
- *Federal multi-state litigation*: Appellate Unit attorneys also staff multistate litigation in federal court in which Vermont is a party, including challenges to the federal government's decision to end the Deferred Access to Childhood Arrival (DACA) program and to discontinue funding cost-sharing reductions under the Affordable Care Act.

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Division Highlights

Solicitor General and Appellate Unit (continued)

- *Act 39 litigation*: successfully defended Act 39, Patient Choices at End of Life, in federal district court.

Tobacco

- Diligent enforcement of tobacco master settlement agreement
- Total tobacco recoveries in FY17 were \$34,720,938.

OFFICE OF THE ATTORNEY GENERAL

Financial Recoveries for State of Vermont
July 1, 2016 to December 31, 2017

Civil Law Division	\$	31,902
Environmental Division	\$	9,223,791
Medicaid Fraud & Residential Abuse Unit (Criminal)	\$	5,025,022
Public Protection Division (Consumer Fraud/Antitrust)	\$	5,843,264
Tobacco / MSA, Strategic, and Significant Factor	\$	34,775,585
Attorney General Total	\$	54,899,565

OFFICE OF THE ATTORNEY GENERAL
AGO Recoveries - FY17 to FY18 (YTD)
Period of July 1, 2016 to December 31, 2017

SUMMARY OF RECOVERIES			
DIVISION	FY17	FY18 YTD	
Civil Division	31,402	500	
Environmental Division	237,000	8,986,791	
Medicaid Fraud & Residential Abuse Unit	4,105,030	919,992	
Public Protection Division	3,806,108	2,037,156	
Tobacco	34,720,938	54,647	
Total Recoveries	42,900,477	11,999,087	

Case State v.	Settle Date	Vermont Share	Comments
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CIVIL DIVISION			
Vermont Leads PAC	07/11/16	1,000	Campaign Finance
Vermont Leads, Inc.	07/11/16	2,000	Campaign Finance
GMA v. Sorrell, et al	08/31/16	17,652	Defense/Appeal cost recovery
Vermont House Republican PAC	09/20/16	2,000	Campaign Finance
Democratic AG's Assoc.	12/20/16	8,750	Campaign Finance
Total	FY17	31,402	
Emmons, Danial	07/17/17	250	Campaign Finance
Brigham, Marcy	07/17/17	250	Campaign Finance
Total	FY18 YTD	500	

ENVIRONMENTAL DIVISION			
Harleysville Worcester Ins.	08/11/16	200,000	ANR/PCF
Pico Village Water Corp.	08/04/16	37,000	
Total	FY17	237,000	
Plum Creek Maine Timberlands	07/14/17	375,000	
Safety Kleen	08/03/17	25,000	Haz Waste / Balance Pending
St. Gobain Performance	10/02/17	1,857,853	ANR
Ruggiero, John / 84 Woodstock	10/05/17	1,863,035	ANR
Great American	10/25/17	523,251	ANR
Volkswagen	11/03/17	4,242,402	ANR
Westminster Meats/Mandich, Daniel	11/06/17	86,250	Balance Pending
Pleasant Valley Farms	12/17/17	14,000	Balance Pending
Total	FY18 YTD	8,986,791	

Case State v.	Settle Date	Vermont Share	Comments
MEDICAID FRAUD & RESIDENTIAL ABUSE UNIT			
Salix Pharmaceuticals	07/29/16	3,056	
Tucker, Karen	08/17/16	43,620	Restitution to DVHA
Ryder, Lisa	08/22/16	9,210	Restitution to DVHA
Bushey, Julie	09/06/16	29,085	Restitution to DVHA
Morse, Donald	09/06/16	4,198	Restitution to DVHA
Burlington Laboratories	10/10/16	3,786,750	Balance Pending
Onmicare (Depakote)	10/27/16	6,628	
Emeritus Senior Living	11/07/16	10,295	
Mousetrap Pediatrics	11/14/16	27,570	
Lynn Madsen, MD	12/15/16	18,275	
Biocompatibles, Inc.	02/07/17	3,666	
Shire Regenerative	02/13/17	5,655	
Forest Labs	02/15/17	8,134	
Relation, Chris	02/28/17	1,125	Restitution to DVHA
Baker, Misti	03/06/17	34,788	Restitution to DVHA
Walgreens	03/08/17	4,434	
Omnicare (Corsi)	05/10/17	71	
Omnicare (Organon)	05/10/17	12,430	
Novo Nordisk	06/06/17	10,182	
Grant, Alison	06/23/17	72,358	Restitution to DVHA
Eichenberger, Heidi	06/30/17	13,500	Restitution to DVHA
Total	FY17	4,105,030	
Allergan	07/07/17	938	
Wiley, Holly	07/08/17	1,630	Restitution to DVHA
LeClaire, Chantal	08/09/17	527	Restitution to DVHA
Mylan, Inc.	09/27/17	832,527	
Handelman, Bob	10/11/17	60,328	Restitution to DVHA
Handelman, Barbara	10/11/17	0	Restitution to DVHA
Palmer, Jaime	11/02/17	3,214	Restitution to DVHA
Francis, Jeanne	11/17/17	20,828	Restitution to DVHA
Total	FY18 YTD	919,992	

Case State v.	Settle Date	Vermont Share	Comments
PUBLIC PROTECTION DIVISION			
Mclsaac and Bairos New England	07/01/16	35,000	
Legacy.com, Inc.	07/11/16	15,220	
Tributes, Inc.	07/11/16	15,311	
Zenvesco, Inc.	07/20/16	34,000	
Cephalon, Inc.	07/28/16	1,590,519	985,545.34 to DVHA
Ruffalo Noel Levitz, LLC	08/25/16	6,000	
Immler, Robert	08/30/16	10,000	Lead
DRAM (Samsung / Winbond)	09/14/16	13,884	
Travel Suppliers of America	09/20/16	10,000	
Jennison, William	09/27/16	5,000	Lead
Finch, Gregory	10/13/16	5,000	
USA Discounters	10/14/16	606,158	Balance Pending
Adobe	11/07/16	37,016	
United Advisors Group	11/09/16	6,500	
Jarras, Charles	11/11/16	5,000	Lead
Bailey, Agnes	11/14/16	2,000	Lead
Donatic/Givalike/Katz	11/16/16	15,311	
Larson Vial, LLC	11/22/16	3,000	Lead
Osterman Propane	12/01/16	7,500	
Brisson v. Baker Distributing	12/02/16	1,125	CRU
Bristol Myers Squibb (Abilify)	12/07/16	222,561	
ruby Corp. (Ashley Madison)	12/14/16	116,083	
Rogers, David	12/15/16	3,000	Lead
Western Union	01/31/17	417,137	
Grand Buffet	02/15/17	30,000	
Watson, Gordon	04/17/17	3,500	Lead
Desautels, Claude	04/18/17	5,000	Lead
Target	05/15/17	169,569	
Johnson & Johnson (McNeil)	05/23/17	377,833	
JPay, Inc.	06/02/17	7,380	
Wilk, Christopher	06/12/17	500	Lead
Ship Sevin LLC	06/29/17	30,000	
Total	FY17	3,806,108	
FireCo, LLC	07/11/17	15,000	
Nationwide Mutual Insurance	07/24/17	203,695	
Bushey, David	07/28/17	1,000	Lead
Lenovo, Inc.	09/05/17	52,620	
SAMange USA, Inc.	09/27/17	264,000	
General Motors Company	10/23/17	1,066,481	
Hilton Domestic Operating	10/31/17	300,000	
Demar, Roger - D & R Family Properties	11/02/17	3,000	Lead
Aiken, Donna	11/22/17	500	Lead
Boehringer Ingelheim	12/20/17	130,860	
Wisch, Daryl and Herbert	12/29/17	2,500	Lead
Total	FY18 YTD	2,037,156	

Case State v.	Settle Date	Vermont Share	Comments
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TOBACCO			
Annual Tobacco MSA Payment	FY17	22,689,312	
Annual Strategic Contribution Fund	FY17	11,944,030	
Colorado, State of / 2014 MSA Sig Factor	FY17	87,596	
Total	FY17	34,720,938	
Annual Tobacco MSA Payment	FY18 YTD	0	Payment due April 2018
Annual Strategic Contribution Fund	FY18 YTD	0	Payment due April 2018
Colorado, State of / 2015 MSA Sig Factor	09/14/17	54,647	Significant Factor
Total	FY18 YTD	54,647	