

Department of Law
 Strategic Plan Performance Report
 March 1, 2015

The Department of Law aims to achieve our vision and accomplish our mission through these five objectives:

- Minimize state risk through the effective representation of client agencies and protect citizens by enforcing regulatory laws and prosecuting cases referred by client agencies;
- Facilitate consumer protection and maintain financial integrity through consumer protection and antitrust enforcement efforts;
- Ensure consumer protection through licensure and registration of regulated consumer lenders, debt collectors, debt-management services providers, and credit repair companies;
- Minimize state risk through the effective representation of state prosecution when defendants challenge their felony convictions before the state appellate courts or the federal courts;
- The Attorney General’s Office has statewide jurisdiction to prosecute criminal offenses and, as such, this section handles a wide variety of criminal matters across all areas of the state including white-collar crime offenses, human trafficking cases, homicides, complex drug conspiracies, and special prosecutions in which our assistance is requested by the Governor or an elected district attorney.

The Department tracks specific workload and performance measures and strategic efforts in attempting to meet performance measures. In coordination with the objectives listed above, the Department of Law has provided specific performance measures and performance evaluations provided below.

Representation of Client Agencies. The Attorney General by statute is the legal counsel and advisor of each department, division, board, bureau, institution of higher education and agency of state government other than the legislative branch and University of Colorado (§ 24-31-101, C.R.S.). The Department represents the various clients efficiently and effectively. The key to this success is retaining quality employees by providing competitive attorney compensation and benefits package and a dynamic work environment.

| Performance Measure | | Actual FY 12 | Actual FY 13 | Actual FY 14 |
|--|--------|--------------|--------------|--------------|
| Provide quality legal counsel and representation to client agencies as measured by client annual survey as satisfied or very satisfied with legal counsel. | Target | 95% | 95% | 95% |
| | Actual | 96.61% | 97.78% | 95.36% |

Evaluation of Prior Year Performance: The department witnessed a slight decrease in overall satisfaction compared to FY 13, which had the highest overall satisfaction rating since implementing this performance measure. The department will continue to hire and do its best to retain quality attorneys through the valuable work attorneys are exposed to and within available resources be “an employer of choice” for the legal field.

Criminal Enforcement and Prosecution. The Attorney General’s trial prosecution efforts (in addition to the litigation that is conducted by our dedicated Financial Fraud and Medicaid Fraud Units) are focused in multiple areas: 1) Complex Crimes, 2) Environmental Crimes, 3) Gang Prosecution, 4) Prosecution Assistance, 5) Auto Theft and 6) the Violent Crime Assistance Team (VCAT).

Complex and/or multi-jurisdictional Securities fraud investigations and prosecutions

| Performance Measure | | Actual FY 12 | Actual FY 13 | Actual FY 14 | FY 15 through Feb. 28 |
|---------------------|--------|--------------|--------------|--------------|-----------------------|
| Restitution Ordered | Target | \$5,000,000 | \$5,000,000 | \$5,000,000 | \$5,000,000 |
| | Actual | \$11,023,182 | \$4,283,094 | \$7,113,232 | \$6,917,153.19 |

Evaluation of Prior Year Performance: The unit’s numbers were fairly similar for the past two years; while the case numbers are low, the sentences and restitution figures reflect the complexity and size of the cases prosecuted. However, the Unit has seen a significant number of criminal investigations opened. This is a reflection on greater cooperation with partner law enforcement and regulatory agencies. Additionally, Colorado victims across the Front Range are well represented in that cases prosecuted this year involve Denver, Broomfield, Douglas, Elbert, Jefferson, and Mesa counties. Through February 28, 2015, which is 75% of the fiscal year the unit has surpassed the target goal of restitution ordered.

Complex and/or multi-jurisdictional Insurance fraud investigations and prosecutions

| Performance Measure | | Actual FY 12 | Actual FY 13 | Actual FY 14 | FY 15 through Feb. 28 |
|---|--------|--------------|--------------|--------------|-----------------------|
| Restitution Collected pursuant to court order | Target | \$100,000 | \$100,000 | \$100,000 | \$100,000 |
| | Actual | \$209,063 | \$253,077 | \$271,975 | \$106,174.26 |

Evaluation of Prior Year Performance: The significant increase in restitution ordered helps illustrate that the Unit is meeting the goal of prosecuting more serious cases. Through February 28, 2015, the unit has surpassed the target goal of restitution collected.

Medicaid Fraud Unit

The Medicaid Fraud Control Unit (“MFCU”), authorized for 17 FTE positions, defends the financial integrity of the state’s Medicaid program and the safety of patients in Medicaid-funded facilities. The MFCU investigates and prosecutes fraud by providers against the Medicaid program and patient abuse in Medicaid-funded facilities throughout the state. It also pursues civil recoveries and damages against providers under the Colorado Medicaid False Claims Act, which became law on May 26, 2010.

| Performance Measure | | Actual FY 12 | Actual FY 13 | Actual FY 14 | FY 15 through Feb. 28 |
|--|--------|--------------|--------------|--------------|-----------------------|
| Medicaid Fraud Total fines/costs/restitution recovered | Target | \$450,000 | \$3,500,000 | \$3,500,000 | \$3,500,000 |
| | Actual | \$8,469,092 | \$16,250,429 | \$9,441,306 | \$4,578,947.53 |

Evaluation of Prior Year Performance: The MFCU obtained almost as many convictions in FY14 as projected for this year. Through February 28, 2015, the unit is on track with target as it has already obtained 10 of the 12 convictions projected for the year.

Consumer Protection

Given the fact that the AG’s Consumer Protection Section is small but has very broad jurisdiction (Consumer Protection Act, Antitrust Act, Charitable Solicitation Act and approximately a dozen other statutes) the section does a very good job of selecting appropriate cases for investigation and enforcement, as well as providing consumer outreach to vulnerable groups, most notable the elderly.

| Performance Measure | | Actual FY 12 | Actual FY 13 | Actual FY 14 | FY 15 through Feb. 28 |
|---|--------|--------------|--------------|--------------|-----------------------|
| Investigate and either sue or settle with individuals or entities that are engaged in deceptive trade practices | Target | 70 | 70 | 70 | 70 |
| | Actual | 55 | 27 | 55 | 93 |

Performance Evaluation: The number of investigations opened and lawsuits filed increased from last year while the number of judgments/settlements/assurances was lower. Significant time and resources were spent this past year on collection of judgments entered last year, including the Patterson and Dalbey collections. Enforcement of injunctions obtained in prior years was also a priority with significant time this past year spent on monitoring and enforcing the Westwood Consent Judgment. In the charitable fraud arena, the default judgment against Adam Shyroch and his fraudulent breast cancer charity was overturned resulting in ongoing prosecution of that matter. Through February 28, 2015, the unit has already exceeded its target due to: (1) increase in consumer complaints, and (2) resolution of older matters which freed up time to open new investigations.

| Performance Measure | | Actual FY 12 | Actual FY 13 | Actual FY 14 | FY 15 through Feb. 28 |
|--|--------|--------------|--------------|--------------|-----------------------|
| Investigate and either sue or settle with individuals or entities that are engaged in anticompetitive conduct such as price fixing, agreeing to restrain trade or entering into mergers that unreasonably restrict competition | Target | 10 | 10 | 10 | 10 |
| | Actual | 9 | 12 | 8 | 3 |

Evaluation of Prior Year Performance: As a result of this strategy we were able to fulfill our goal of providing protecting for Colorado consumers by leveraging limited resources. The e-books lawsuit provides a good example of the effectiveness of this strategy. In April 2012 Colorado, along with 32 state Attorney General Offices, filed suit against five publishers and Apple for price fixing on best-selling books that are distributed electronically and read by consumers on tablets or other electronic devices. This is a nationwide practice that Colorado could not handle on its own with just one attorney. This strategy has resulted in \$166.0 million in settlements with five publishers, and resulted in a finding that Apple participated in this price-fixing conspiracy and a pending \$400.0 million settlement with Apple.

The figure reported for FY12-13 reports the number of cases investigated, litigated or brought to resolution through settlement or judgment. They include traditional investigations of anticompetitive conduct, such as price fixing and agreements to restrain competition. They also include reviews of mergers that threatened to reduce competition. These activities are broken down as follows:

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- The trial and finding entered against Apple in which the court concluded that Apple conspired with eBook publishers to raise the price of eBooks.
- 3 investigations opened to conduct that may be anticompetitive
- 8 settlements reached, including 5 with the publishing companies that conspired with Apple to raise the price of eBooks. These settlements resulted in \$166.0 million to consumers nationwide.
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Through February 28, 2015, the unit is below target due to the absence of new antitrust complaints and significant staff time committed to older matters.

Consumer Credit:

| Performance Measure | | Actual FY 12 | Actual FY 13 | Actual FY 14 | FY 15 through Feb. 28 |
|--------------------------|--------|--------------|--------------|--------------|-----------------------|
| Require Consumer Refunds | Target | \$1,500,000 | \$1,500,000 | \$1,500,000 | \$1,500,000 |
| | Actual | \$5,287,437 | \$1,170,574 | \$833,051 | \$792,024 |

Evaluation of Prior Year Performance: Consumer refund total amounts were consistent with previous years prior to the institution of the exam authority of retail sales finance. Additionally, the examinations are resulting in more compliance with the statutes; as a result refunds have decreased. Through February 28, 2015, the Unit is below target for refunds. In looking at this specific performance measure historically and what was included as factors of the measure, the Unit will be adjusting the performance measure and what factors are included to more accurately reflect the Units performance.

Appellate:

Objective: Produce quality briefs appropriately tailored to the seriousness of the offense/appellate challenge while maintaining or improving success rate.

| Performance Measure | | Actual FY 12 | Actual FY 13 | Actual FY 14 | FY 15 through Feb. 28 |
|---|--------|--------------|--------------|--------------|-----------------------|
| Percentage of cases with a successful outcome on appeal | Target | 90% | 90% | 90% | 90% |
| | Actual | 91.2% | 91.0% | 91.3% | 88.4% |

Evaluation of Prior Year Performance: Over the past two years, the Division has met its goal of preserving at least 90% of the convictions challenged on appeal.

The addition of six attorney positions in FY 2014, hard work on the part of Division staff, the use of the experimental docket, and lower incoming numbers combined to produce a significant decrease in the backlog of cases awaiting answer briefs. At the end of FY 2013, the backlog stood at 564 cases; the Division reduced that number to 272 cases at the end of FY 2014, a reduction of over 50% (292 cases). Through February 28, 2015, the unit's success rate on appeal is at 88.4%, close to its 90% target.

http://www.coloradoattorneygeneral.gov/departments/administration/budgeting_accounting