



KEITH ELLISON
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1609
TELEPHONE: (651) 296-6197

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NYU School of Law
State Energy & Environmental Impact Center
40 Washington Sq. South
New York, NY 10012

SUBMITTED VIA E-MAIL TO:

stateimpactcenter@nyu.edu

Re: Application to Participate in New York University School of Law State Energy and Environmental Impact Center's Law Fellow Program

I appreciate the opportunity to submit the Minnesota Attorney General's Office's ("Office") application to participate in New York University School of Law State Energy and Environmental Impact Center's ("NYU") Law Fellow program ("Program"). The Office would greatly benefit from collaborating with the Program to secure the appointment of one or more Special Assistant(s) Attorney General ("SAAG"). The Program would provide the Office with additional staffing necessary to expand my demonstrated commitment to advancing progressive clean energy, climate, and environmental matters of regional and national importance.

As set forth more fully on the Program's webpage, the Office's application addresses the following sections: (1) Office Eligibility and Narrative; (2) Office Structure; and (3) Budget Proposal and Confirmation of Authority.

1. Office Eligibility and Narrative

As Attorney General, I intend to dispel the notion that economic growth and environmental stewardship are mutually exclusive propositions.¹ Funding and staffing

¹ Prior to becoming Attorney General, I consistently advocated for the protection of environmental and natural resources by promoting renewable energy and environmental justice, and combating climate change, both at the state and federal levels. These issues have always been of paramount importance to me, which is the reason I helped co-found Environmental Justice Advocates of Minnesota. When I served in the Minnesota House of Representatives from 2003 to 2006, I engaged in legislative initiatives germane to the Program's purpose. The environmental nonprofit community recognized my dedication: when I announced my first Congressional campaign, I was endorsed by the Minnesota chapters of both the Sierra Club and Clean Water Action. While in Congress from 2007-2019, I sponsored or cosponsored nearly 100 bills involving renewable energy, climate, and environmental matters. Although largely irrelevant to the Office's application, I briefly summarize my consistent dedication to these efforts given the Program's intent to give "[p]riority consideration" to "state attorneys general who demonstrate a commitment to" environmental issues.

shortfalls, however, have severely diminished the Office's ability to fully participate in federal multistate litigation involving environmental issues. The Office advances and defends progressive clean energy, climate, and environmental matters of regional and national importance primarily through its Environment & Natural Resources ("E&NR") Division. The E&NR Division mainly defends enforcement actions taken by three state agencies (Department of Agriculture, Department of Natural Resources, and Pollution Control Agency) and three boards (Animal Health, Environmental Quality, and Water and Soil Resources). The E&NR Division also represents its clients in a variety of other matters, including transactional real estate, client advice, rulemaking, and other legal issues outside the Program's focus.

The E&NR Division is presently staffed with only five full-time litigation attorneys, exclusive of one transactional real estate attorney and the Division Manager. As a result, the E&NR Division is frequently required to seek staffing assistance from attorneys assigned to other Divisions within the Office. Despite limited resources, the E&NR Division currently handles over one hundred active and wide-ranging cases, including the following Minnesota-specific cases concerning progressive clean energy, climate change, and environmental matters with regional and national implications:

- Opposed the U.S. government's inadequate environmental review for the renewal of Twin Metals' mineral leases needed for its controversial mine near the Boundary Waters;
- Obtained an injunction against the U.S. government after challenging the unpermitted construction of a \$2 billion flood diversion project that threatened material adverse environmental impacts;
- Defended Minnesota's water quality standards to reduce eutrophication in rivers and streams—and the EPA's approval of those standards—in state and federal courts;
- Participated in several enforcement actions involving PFAS pollution, including securing the nation's third largest natural resource damages settlement (\$850 million); and
- Defended agency enforcement action against two of the nation's largest waste management companies for illegally landfilling waste without attempting to convert that waste into energy through incineration.

In addition, the E&NR Division has participated as a signatory in many multistate initiatives, such as rulemaking, litigation, and other policy efforts concerning progressive clean energy, climate change, and environmental issues, including the following:

- Mercury and Air Toxics Standards; Clean Power Plan (and Affordable Clean Energy); energy efficiency standards for appliances and industrial equipment; delay and impermissible reversal of ozone standards designations; repeal of emission requirements for Glider vehicles, engines, and kits; HFC guidance and rollback rule; TSCA reporting and data collection for mercury and asbestos; car and light-duty truck emission and mileage standards; actions against automobile manufacturers regarding defeat device and impermissible air emissions; opposition to the withdrawal from the Paris Climate Agreement; reduction or implementation delay for emission standards for wood-fired boilers and forced-air furnaces; supporting state-led efforts to investigate Exxon Mobil;

Anti-Science rule; and call for FERC commissioner recusal from Grid Resiliency Proceedings due to bias.

Since becoming Attorney General, the Office has joined approximately 60% of the multistate actions defending and advancing laws and policies that promote clean energy, prevent climate change, and protect the environment.² The Office has a long history of participating in federal multistate environmental and energy actions. Through participation in NYU's Program, and the appointment of one or more SAAG(s), I hope the Office can expand its role in the federal multistate arena.

2. Office Structure

The Office is presently organized into sixteen Divisions within five different Sections. Each Division is supervised by a Manager who reports to the Deputy Attorney General overseeing that Section. Deputy Attorneys General then report to the Chief Deputy and myself.

If NYU selects the Office to participate in the Program, the SAAG(s) would serve in the E&NR Division, which is within the Regulatory Law and Professions Section. The appointed SAAG(s) would report directly to E&NR Division Manager, Max Kieley. The SAAG(s) would also collaborate with other division members and the Deputy Attorney General overseeing the E&NR Division, Karen Olson. The SAAG(s) would also be provided with opportunities to interact with both me and my Chief Deputy, John Keller.

The Office is in need of either one SAAG with fifteen or more years' experience leading complex environmental and energy litigation at the federal and state levels, or, alternatively, two SAAGs with five to ten years of comparable experience. A more highly-qualified SAAG would enable the Office to focus on identifying, developing, and leading federal multistate actions. Less experienced SAAGs, on the other hand, would allow the Office to broaden its participation and assistance to states leading federal multistate actions.

Any SAAG(s) the Office appoints through the Program will ideally possess strong written and oral communication skills, vast federal and state litigation experience in the environmental and energy context, and significant familiarity and knowledge regarding drafting pleadings, oral and written discovery, motion practice, and trial and appellate court practice.

3. Budget Proposal and Confirmation of Authority

The Office proposes that any SAAG(s) appointed through the Program be compensated at a rate comparable to Assistant Attorneys General with equivalent experience. The Office's attorneys with five to ten years' experience receive salaries ranging from \$74,000 to \$115,000.

² These percentages were derived by taking the total number of multistate actions listed on the Program's webpage and excluding all actions taken by a sole state attorney general.

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Assistant Attorneys General with extensive and specialized subject-matter expertise with fifteen or more years of experience typically range in salary from \$96,000 to \$130,000.

Through this application, I confirm that the Office has the authority to appoint one or more SAAG(s) if selected as a Program participant. Nevertheless, the Office's participation in the Program implicates several Minnesota-specific issues that must be addressed with NYU prior to finalizing any written agreement. For example, two such issues arise from NYU's proposed language regarding indemnification and malpractice insurance. The Office may, however, identify additional issues if selected to participate in the Program.

The Office very much appreciates the opportunity to be considered by NYU to participate in the Program. I look forward to working with NYU to secure the appointment of one or more SAAG(s) to assist the Office in advancing and defending progressive clean energy, climate, and environmental matters of regional and national importance. If NYU requires additional information regarding the Office or its application, please do not hesitate to contact me directly.

Sincerely,



KEITH ELLISON
Attorney General