

**OFFICE OF THE ATTORNEY GENERAL
2003 ANNUAL REPORT**



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Message from Attorney General Terry Goddard

I am proud to present you with the Arizona Attorney General's Office 2003 Annual Report. This report illustrates the scope and depth of the work of this Office, and its talented staff.

It is impossible to read this report without coming away with an enormous respect for the bright and committed staff that serves Arizona through the Attorney General's Office. Spanning the spectrum of legal jurisdictions from civil to criminal, from children and families to seniors, from agency representation to consumer protection, our work touches the State and her people in the most poignant ways.

It has been an honor to serve as the Arizona Attorney General, and I look forward to the challenges we face together in the upcoming year.

A handwritten signature in black ink that reads "Terry Goddard". The signature is written in a cursive, slightly stylized font.

Terry Goddard
Arizona Attorney General

Executive Office

The Arizona Attorney General's Office is the largest public law firm in the state, and the practice areas include: Protecting Arizona consumers against fraud, providing Arizona taxpayers with quality representation of State agencies, ensuring that Arizona aggressively pursues and prosecutes drug dealers and predators, and defending the human rights of all Arizonans.

In the last fiscal year (2002-2003), the Arizona Attorney General's Office experienced severe budget cuts, and still produced remarkable outcomes. This is a testimony to the quality and commitment of the dedicated public servants in the Attorney General's Office.

The Executive Office is comprised of:

- The Office of Communications and Governmental Affairs
- The Office for Children, Youth and Families

External Communications

The Office of Communication and Governmental Affairs is responsible for communications between the Attorney General's Office and State agencies, governmental entities, other law enforcement, the media, the legislature and the public. This office also reviews and produces written materials such as brochures, news releases, and newsletters, as well as producing displays, videos and responding to constituent mail.

Accomplishments

- Developed a price gouging bill with the Arizona State Legislature.
- Attended all committee and subcommittee meetings on the Governor's pipeline safety working group.
- Worked with law enforcement agencies on the issue of the safety of bullet-proof vests.

- Issued 80 media advisories, releases or scam alerts to keep the public informed on important, settlements and programs.
- Responded to over 4,000 phone calls and other requests from the media on various cases, issues and public records requests.
- Produced a public service video on Predatory Lending.

Solicitor General's Office

The Solicitor General's Office (SGO) oversees the appellate representation of the State and its agencies in both State and Federal courts. The SGO reviews all civil appellate matters and works with the Criminal Appeals Section in particularly significant criminal cases.

The SGO also manages the production of Attorney General Opinions; handles elections law matters, including representing the Secretary of State and the Citizens Clean Elections Commission; provides independent advice to more than 100 State agencies and boards; oversees open meeting law enforcement, and public records compliance; and assists the Attorney General, the Chief Deputy, and others in the Office on special projects.

Accomplishments

The SGO participated in approximately 556 appellate matters to ensure consistency in the State's positions and to maintain high quality in the briefs and arguments presented in State and federal courts. The SGO advises whether to pursue appeals, reviews and prepares appellate briefs, petitions for special actions, petitions for review, and petitions for writs of certiorari; and assists attorneys in preparing for oral argument.

SGO attorneys authored briefs or presented oral arguments in more than 31 cases in various state and federal courts, including the U.S. Supreme Court, the U.S. Court of Appeals for the Ninth Circuit, the Arizona Supreme Court, and the Arizona Court of Appeals.

The SGO assisted the Attorney General in issuing six formal legal opinions. The SGO reviewed the appropriateness of 39 opinion requests under the governing statutes and oversaw the research and drafting of formal and informal opinions. The formal Attorney General opinions provided guidance regarding a variety of subjects, including the Secretary of State's authority over voting machines, enforcement of criminal laws on State Trust land, and school bus safety issues.

The SGO is also responsible for handling elections law matters. This work covers a range of issues, including advising both the Secretary of State and the Citizens Clean Elections Commission and representing these entities in litigation in trial and appellate courts. The SGO also oversees enforcement efforts related to campaign finance disclosure laws and is responsible for submitting State changes to election laws to the United States Department of Justice for pre-clearance under the Federal Voting Rights Act.

The SGO provided independent advice in more than 1,692 matters to State agencies, boards, and commissions that make the administrative decisions in cases where Assistant Attorneys General served as advocates. This system avoids conflicts of interest that would result if the same Assistant Attorney General acts as an advocate and advisor to the administrative decision-maker.

Important Cases

- **May v. Brewer:** The Arizona Supreme Court upheld the surcharge funding provision of Arizona's Clean Elections Act. The United States Supreme Court denied Mr. May's petition for certiorari.
- **Arizona Libertarian Party v. Bayless.** Defended the constitutionality of Arizona's open primary law. The Ninth Circuit remanded the case to federal district court.
- **Right to Life PAC v Brewer.** Defended the constitutionality of Arizona's campaign finance laws in actions filed in federal district court.
- **Planned Parenthood v. LaWall.** Successfully defended Planned Parenthood's challenge of the constitutionality of Arizona's judicial bypass abortion statute in the Ninth Circuit Court of Appeals.

- **Beneficial National Bank v. Anderson.**
Authored a multi-state amicus brief in the United States Supreme Court addressing the application of the doctrine of complete preemption to §§ 85 and 86 of the National Bank Act.

The SGO continues to represent the Arizona Supreme Court and other state judges in a challenge of the power of the state courts to require private attorneys to provide limited service as court-appointed arbitrators to reduce delay and caseloads in the Superior Courts. In addition, SGO continues to assist with the defense of the State in education finance litigation.

Attorney General Opinions Summaries **FY2003**

- **102-006:** Although Arizona Revised Statutes § 16-442 provides the Secretary of State with the authority to adopt the types, makes, or models of vote recording or tabulating machines or devices, it does not authorize decertification of those same machines or devices.
- **102-007:** State, county and local law enforcement agencies have the authority and obligation to enforce criminal laws on State Trust land. This authority does not conflict with the Arizona State Land Department's responsibility for the use, management and disposition of State Trust land and the State's obligation to manage State Trust land in the best interest of the trust.
- **102-008:** Because the Legislature specifically excluded charter schools from School Facilities Board funding, a public school that is re-designated as a charter school is no longer eligible to receive monies from any of the three funds the School Facilities Board administers. The School Facilities Board does not, however, have the statutory authority to require school districts to repay Deficiencies Correction Fund monies that the public school received before it was re-designated as a charter school.

- **102-009** Pursuant to Arizona Revised Statutes § 42-5031, the Department of Revenue receives the information necessary to determine if a stadium district organized pursuant to A.R.S. § 48-4202 is entitled to receive a portion of the transaction privilege taxes generated within the district and to make the calculations necessary to enable the State Treasurer to transfer appropriate amounts to the district.
- **102-010** Transportation to and from preschools, including Head Start programs, is governed by Department of Health Services regulations, rather than the school bus regulations that the Department of Public Safety implements. State law does not prohibit schools from transporting students to and from school in a vehicle that is designed for 10 or fewer passengers.

ADMINISTRATIVE OPERATIONS DIVISION

Human Resources Division

The Human Resources Section (HRS) is responsible for professional, accurate office-wide personnel related activities. The functions include:

- recruiting staff
- explaining benefits
- employee relations and employee counseling
- advising upper-level management on human resources matters
- providing administrative support to the attorney hiring committee
- drafting human resources policies and procedures
- administering and maintaining employee security badges
- processing and implementing personnel actions
- and providing management with various personnel related reports

HRS also is responsible for ensuring that the Attorney General's Office personnel practices are consistent with applicable Arizona Department of Administration rules and procedures and that the Office is complying with State and federal laws.

HRS additionally provides service to managers and employees to resolve work-related issues and furnishes professional accurate and up-to-date information to employees, job applicants and the public in the area of human resources.

Accomplishments

- Completed all ADOA Reduction-in-Force (RIF) requirements with 100 percent accuracy in implementing the February 2003 RIF. Coordinated out-reach processes with the ADOA Outplacement Program and other state agencies in considering AGO affected employees for placement. Conducted one-on-one counseling with impacted staff.
- Met ADOA established target/deadline for researching and supplying data associated

with the major conversion of the Attorney General's Office employee data in the Human Resources Management System (HRMS) to the Human Resources Information Solution (HRIS).

- Implemented a formal interview process for students enrolled in the high school Cooperative Office Education (COE) program that provided supervisors with the ability to match applicants more closely with the needs of the division. Also provided the COE applicant with a structured interview experience as their first exposure to applying and interviewing for a position with the Office of the Attorney General.
- Coordinated the office-wide Annual Travel Reduction Survey. AGO had a 90.5 percent completion rate.
- Coordinated the office-wide State Employee Charitable Campaign which received an award in the Leadership Giving category.
- Updated 50 Employee Relations Letters to include new rule citations to ensure that supervisors have current and accurate documents available.
- Converted approximately 75 percent of the Attorney General personnel files to a format that is organized for easy access and retrieval of information.
- Staff completed the HIPAA training to ensure compliance with regulations.
- Conducted 32 ethics orientation sessions for attorneys and non-attorney staff.
- Reviewed, researched, and processed 1,517 Personnel Action Requests.

Financial Services Section

The Financial Services Section (FSS) has primary responsibility for the financial, budgeting, procurement and centralized support services for the Attorney General's Office. The financial duties include:

- processing restitution payments and vendors' invoices
- processing payroll for the Office
- reimbursing employees' travel claims,
- depositing all monies collected by the Office,
- maintaining adequate internal accounting controls
- proper stewardship of the Office's assets

The budget duties include preparing the monthly financial statements presented to the various Sections/Divisions within the Office, preparing the Office's biennial budget and Strategic Plan/Master List to the Office of Strategic Planning and Budgeting and the Joint Legislative Budget Committee, and submitting all reports required by Arizona law and various federal agencies.

FSS is responsible for procuring and contracting for a wide range of goods and services to support the operations of the Attorney General's Office in accordance with the procurement code. Centralized support services include the main lobby receptionist area, central copy room and office-wide mailroom. The main lobby receptionist greets all visitors to the Law Building, issues visitor passes and fields all incoming calls received at the main Phoenix number from the public. The central copy room has a technician on staff who manages the copy and binding machines. The mailroom handles all incoming and outgoing mail for the Phoenix Office. The mailroom sorts the incoming mail for distribution to the Capital Center and the Law Building.

Accomplishments

- 36,300 separate financial transactions were processed.
- Completed written procedures for over 40 accounting related processes, which have improved consistency, efficiency and

reduced the "learning curve" time for new staff

- Processed approximately 1,435 warrants totaling \$1,985,000 in restitution payments related to consumer protection matters.
- Assisted the Divisions in implementing a budget reduction plan that helped to minimize the impact of the Legislative mandated \$2.7 million budget reduction bill signed on December 5, 2002.
- Awarded 90 contracts to outside counsel.
- Handled approximately 25,000 phone calls through the main switchboard.
- Processed approximately 188,000 pieces of mail through the Law Building mailroom.

Information Services Section

The Information Services Section (ISS) is responsible for maintaining, supporting, planning, and installing all of the Attorney General's Office (AGO) computer automation equipment. This includes the day-to-day support and resolution of user issues and the design and implementation of new system functions and capabilities. ISS must be able to provide all AGO employees fast and courteous response to automation related issues, yet still implement new system functionality.

Accomplishments

ISS is continually updating and modernizing the AGO computer network infrastructure.

- Installed 175 new PCs, laptops and personal digital assistants (PDAs).
- Replaced two existing file servers and installed four new application servers.
- Replaced an existing toll data line with a wireless Ethernet link saving the Agency approximately \$13,000 per annum.
- Established the first three encrypted data links that use a new highly secure 128-bit algorithm.

- Upgraded the remaining 200+ users to the newer e-mail system, GroupWise version 5.5.
- Established a secure Web site that enables multiple law enforcement agencies to collaborate and share evidence in support criminal investigations.
- Enhanced on-line Internet services by establishing Tobacco Registry and Prescription Drug Calculator.
- Created multiple databases to track: Office attorneys and their associated legal experience; postal mail for the Executive Office; and employment applications for Human Resources.
- Completed the migration of the AGO Child and Family Protection Division (CFPD) onto the AGO network. All 250 CFPD staff spread over 14 locations Statewide now have access to vital legal automation tools, including modern desktop software, e-mail, the Internet, legal research, case management, and document management systems. The project was completed two years ahead of schedule and 34 percent under projected cost.

Library and Research Services

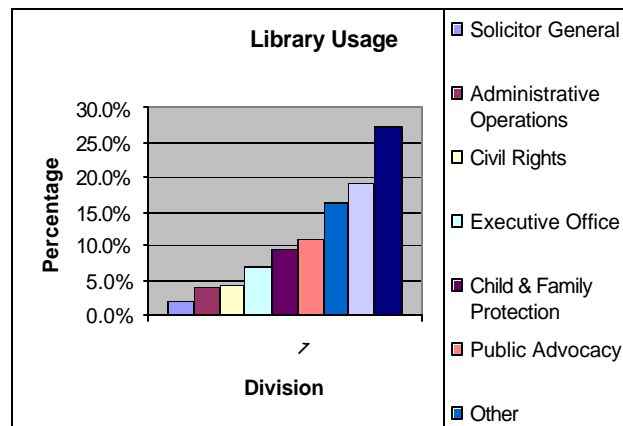
Despite facing a setback during FY2003 due to reduced staff resources and a significant reduction in the book collection, the Library continued to focus on the importance of high-level and relevant service to the Attorney General Staff.

Accomplishments

- Responded to 1,430 requests for information retrieval.
- Completed 303 research projects.
- Coordinated on-line research training for 75 legal staff.
- Through the Continuing Legal Education Tapes Library, filled 70 interlibrary loan requests for CLE tapes.

Service Activity per Division:

The following chart represents an “at a glance” overview of library services provided to each division.



* “Other category” includes requests from law enforcement offices, county attorney offices throughout Arizona and other states, as well as “general public” information requests.

Facilities Management and Planning Section

The Facilities Management and Planning Section (FMP) manages the day-to-day operation of the state office buildings occupied by the Attorney General’s Office in Phoenix and Tucson. The Section is also responsible for facilities planning, including space allocation, utilization, plus planning and design for future facility needs.

The Section’s duties also include processing and coordinating maintenance, tenant improvement, and telecommunications service requests with the Arizona Department of Administration (ADOA).

FMP also has responsibility for building safety and security systems, including visitor screening, security cameras and recorders, and coordination of physical security system operations and maintenance with ADOA. In addition, the Section serves as the agency loss prevention coordinator with ADOA risk management. Another function is the AG shuttle service, transporting Attorneys and other staff to and from the courts.

Accomplishments

- The building access control system was improved with the installation of 60 new dual technology card access readers. In addition, in cooperation with the ADOA Physical Security section, the system was improved with the addition of several new automatic exit sensors and emergency exit devices.
- The security surveillance system was expanded to include the Capital Center, with 16 cameras covering interior lobbies, hallways, and the entire perimeter of the building exterior. The cameras are recorded on a new digital recording system. The Law Building system was improved with eight new cameras covering elevator lobbies and hallways. Four exterior cameras completed coverage of the building exterior. A sixteen channel digital recorder was added to the system.
- Completed installation of a new fire alarm system in the Capital Center. This was a building renewal project managed through ADOA Building and Planning Services. The new system expands fire alarm coverage to the parking garage.
- Addressed deficiencies in building emergency lighting systems were addressed. During fire drills, and an unplanned power outage, FMP learned that emergency lights were inoperative, as were many of the lighted exit signs, in areas of the Capital Center and Law Building. FMP conducted a thorough review of emergency lighting systems, and developed a scope of work to correct deficiencies. In cooperation with ADOA Facilities Operations and Maintenance, repair of many existing fixtures was completed, and the installation of 71 new exit and emergency lighting fixtures was initiated.
- The AG shuttle continued to provide a valuable service, transporting attorneys, staff, and documents to the courts and other agencies in the Capitol Mall area. During FY2003, the shuttle carried 9,580 passengers and logged a total of 12,010 miles. The shuttle saves valuable employee time, alleviates the problem of finding parking in the court areas, and reduces pollution.
- FMP processed a total of 1,068 work orders with ADOA Facilities Operations and Maintenance to repair, maintain, and improve working conditions in the state buildings occupied by the Attorney General's Office.
- The Section also processed 445 telecommunications service requests during the fiscal year.

CHILD AND FAMILY PROTECTION DIVISION

Child Support Enforcement

The Child Support Enforcement Section (CSE) represents the Arizona Department of Economic Security's Division of Child Support Enforcement (DCSE), which provides child support enforcement services pursuant to Title IV-D of the federal Social Security Act. DCSE has over 250,000 cases and provides child support services to locate parents, establish paternity, establish support orders, modify support orders, and enforce support orders. CSE provides legal services to DCSE in support of its mission to provide effective and fair child support services to families. CSE has offices in Phoenix, Glendale, Mesa, Tucson, Flagstaff, Kingman, Safford and Yuma.

Accomplishments

- CSE continued its heavy litigation caseload, attending a record number of over 24,000 court appearances in FY2003 statewide. During FY2003, DCSE shifted its emphasis to cases with existing court orders.

During the current fiscal year, more resources were devoted to actions to modify and enforce support. By hearing or stipulation at court, 2,192 modification matters and 7,052 enforcement matters were resolved.

CSE also continued to assist DCSE with the establishment of paternity and new support orders by establishing 5,031 new support orders.

- The Pima County Attorney's Office terminated its agreement with DCSE to provide child support services, effective June 30, 2002. The Arizona State Legislature funded this new activity in May 2002, and CSE secured office space and equipment, hired and trained staff to take over the caseload beginning July 1, 2003.

CSE assumed immediate responsibility for an already scheduled court caseload with over 600 hearings per month. During FY2003, its first year of operation, the

Tucson office handled 7,130 court appearances. As in the rest of the Section, the Tucson office focused on existing court-ordered cases this year. The Tucson office led the way, resolving 3,899 support enforcement cases at court and 674 modification actions.

Major Cases

- **Burdick v. Blessing:** Federal court class action filed after the Supreme Court's favorable decision in April 1997 in Blessing v. Freestone. The Burdick Complaint alleged a federal right to services related to the establishment of support orders. Pursuant to a January 1999 Stipulation approved by the federal court, DCSE agreed to enhance its performance in order establishment by specified goals, make process improvements, and provide quarterly progress reports. Pursuant to that Stipulation, the action was stayed and class certification deferred until June 30, 2002. The final quarterly report was submitted in August 2002 and demonstrated substantial compliance with the Stipulation. In November 2002, the United States District Court entered an order dismissing the case with prejudice without certifying the class, ending nearly 10 years of litigation.
- **Dominguez v. Clayton:** Class action filed August 2001 in state court challenging Arizona's implementation of a "family benefit cap." The parties engaged in settlement negotiations and agreed to seek legal authority to effect a pass-through to the family of child support for the "capped" child. The lawsuit was dismissed in January 2003, with the understanding that it could be re-filed with another plaintiff if the underlying issue was not resolved. After receiving clarification from the Federal Office of General Counsel, CSE assisted DCSE with drafting legislation, which eliminated such support from assignment and permitted support in such cases to be passed through to the family. The legislation was introduced by DCSE, passed by the Legislature, and signed by the Governor on

May 16, 2003 with an effective date of June 30, 2003. This resolved the subject matter of this litigation.

- **Hoffman v. Clayton:** Class action filed in 1999 challenging distribution of support to current and former assistance recipients. Sought prospective injunctive relief, an audit of all cases in the class, procedural due process changes, and attorney's fees. The putative class is very large, and the audit would have been extremely costly to the state. The lawsuit was settled, and on November 20, 2002, the Court approved the settlement and dismissed the case without class certification. The agreement provided for procedural due process changes, which were made in legislation, a pending rule, and by policy and forms changes. The agreement also provided for monitoring, quality assurance, and an independent reviewer to analyze, review and report the accuracy of distribution in 30 randomly selected cases each quarter for two full years. Pursuant to the agreement, the Court retains jurisdiction for enforcement for two years after the start of the independent review process. In June 2003, the parties agreed upon the criteria for selecting the cases for review and the firm to conduct the independent review and analysis of the cases.

Civil & Criminal Litigation & Advice Section

The section represents the Department of Economic Security (DES). DES is the primary social service agency in Arizona.

The Civil Unit provides advice and representation for all DES programs except Child Protective Services and Child Support Enforcement. This includes the Adoption Subsidy program, Developmental Disabilities program, Unemployment Insurance and Tax programs, Protective Services Review Team cases, Child Care Licensing, Title XIX Medicaid and Long Term Care programs, Adult Protective Services, Behavioral Health Services for dependent children and collection of debts owed to DES programs.

Additionally, the Unit provides legal advice and representation to the Department regarding its business operations such as personnel and employment discrimination, procurement and facilities issues. Due to the size and diversity of the Department, these issues are often complex and ones of first impression.

The Criminal Unit prosecutes individuals and contractors who defraud the State of Arizona through DES programs. This Unit also prosecutes parents who willfully fail to provide support for their children.

Accomplishments

The Civil Unit received 777 administrative litigation cases and resolved 657 cases during FY2003. In addition, 685 collection cases were filed and 525 judgments were obtained. The Unit also opened 528 "matter" files for tracking significant legal advice requests from DES.

DES encountered significant high-level management changes and required extensive advice pertaining to the budget shortfalls and its impact on the Agency. Additionally, members of the Unit have worked with DES to prepare for and implement HIPAA.

The Criminal Unit filed 265 cases involving welfare, unemployment insurance and program fraud, child support work furlough escapes, and criminal nonsupport; 262 individuals were sentenced this year. The Unit was successful in obtaining sentencing orders for \$1,057,164 restitution. Of that amount, \$284,244 was received prior to sentencing.

The Criminal Unit worked with the client agency to develop procedures for prosecution of child care recipient fraud cases. Section members continue to provide counsel and advice, criminal prosecution and legal representation despite continued budget constraints and an average of 30 percent vacant positions (10-14 vacancies out of 38 positions).

Protective Services Section

The Protective Services Section provides comprehensive legal representation to the Department of Economic Security (DES) on behalf of abused and neglected children and in

support of Child Protective Services' (CPS) efforts to protect children, preserve families and achieve permanency for Arizona's kids. These cases are known as dependency cases and are presided over by the juvenile court. The attorneys and staff of the Protective Services Section provide this legal representation in all 15 counties with offices in Flagstaff, Kingman, Mesa, Phoenix, Prescott, Safford, Sierra Vista, Tucson and Yuma.

Accomplishments

- Governor Janet Napolitano established the Advisory Commission on Child Protective Services Reform to review Arizona's current child protection/services landscape and to make recommendations on how Arizona can best serve children, especially those in need of protection. The Governor set a deadline of June 30, 2003. The Commission established seven subcommittees to focus on systemic reform in specific areas of child welfare. The subcommittees were Community, Education, Health, Juvenile Justice, Records, Reports and Structure.

The Protective Services Section served on all seven subcommittees. Protective Services Section attorneys provided many hours of research, planning, analysis and discussion (each subcommittee met at least seven times between February and June) that led to the more than 200 recommendations from both the Commission and the subcommittees. The Protective Services Section had significant input in the recommendations as evidenced by some of the specific reforms set forth in the Governor's Action Plan released September 30, 2003.

- The Policy, Procedure and Training (PPT) Unit of the Protective Services Section assisted DES with a Study of Compliance with the Indian Child Welfare Act Audit (ICWA) conducted by the Kathryn M. Buder Center, George Warren Brown School of Social Work, at Washington University in St. Louis, MO. The study was the first scholarly review of state agency compliance with ICWA since its enactment in 1978, and is expected to have national impact, including

any future Congressional review and revision of the ICWA. The study reviewed dependency and severance cases involving Indian Children in rural and urban Arizona. The Protective Services Section attorneys provided substantive information for the audit. The PPT Unit helped refine the audit instrument, obtained information, conducted in-depth reviews of the selected legal files, monitored the auditors from the University, and reviewed the draft and final reports. The PPT Unit's review and objection to inaccuracies or misperceptions in the draft report resulted in significant improvement of the audit's conclusions regarding DES's compliance with ICWA.

- In FY2002, in response to the recommendation for prompt determinations of paternity and financial responsibility by parents in dependency cases, the Protective Services Section – in collaboration with CPS, the Division of Child Support Enforcement and the courts – launched a pilot project designed to obtain appropriate child support and paternity orders. The Office revised its legal forms to specifically plead paternity and child support and to ensure that any paternity determination survives the dismissal of the dependency action (allowing it to be used in later family court proceedings, such as those to establish child support). The Protective Services Section Best Practices Internal Workgroup also reviewed and revised all standard legal pleadings to ensure compliance with rules and statutes and statewide consistency with office practice.
- Over the course of FY2003, all fifteen counties implemented the new dependency petition format. Training all legal and support staff statewide on the new format was a major undertaking. All Protective Services Section petitions now address paternity and child support. The Protective Services Section also instilled mechanisms to ensure paternity determinations survive dismissal of the dependency action.
- FY2003 brought the end of the CERF funding that had provided the Protective Services Section with \$7.9 million dollars in

funding over a four year period. The Protective Services Section's budget was further reduced by cuts to DES's total budget in both FY2002 and FY2003 that resulted in a loss of more than \$800,000 to the Protective Services Section (an effective budget reduction of an average of \$2.8 million per year). At the same time, in FY2003 the Protective Services Section experienced a 29.5 percent increase in total dependency filings (including privately filed substitutions and all supplemental filings), 38 percent increase in appeals and a 13 percent increase in the year-end open caseload.

To meet the dramatically increasing filings and court demands, the Protective Services Section continually self-evaluated, prioritized and reorganized. Each unit continued to recognize and respond to the unique needs of its demographic area and implement change accordingly. The Protective Services Section worked closely with the courts statewide to streamline dependency proceedings and maximize efficiency wherever possible.

As a result, the Protective Services Section was able to file 3,351 total dependency petitions, 581 severance motions, 260 guardianship motions and 47 adoption petitions. The Protective Services Section helped achieve permanency for 2,858 children in care. Of these children dismissed from care, 1,597 were reunified with their parents, 296 were placed with a permanent guardian and 671 were adopted by relatives or foster parents. The Appeals Unit also represented CPS in 109 appeals.

- The Protective Services Section provided specialized training to all of its attorneys statewide. The training armed the attorneys with specialized knowledge necessary to assist ADES and the courts in ensuring that the "reasonable efforts" requirements of the Adoption and Safe Families Act (ASFA) are met. These requirements are necessary to maintain federal funding. The training session topics included: domestic violence, educational issues for CPS attorneys, in-home dependencies and powers of attorney, diversity, behavioral health for

children, behavioral health for parents, developmental disabilities, the Indian Child Welfare Act, and the Mediation/Alternative Resolution.

- On February 25, 2003, the U.S. Supreme Court upheld the right of the State of Washington DSHS to act as representative payee for foster children who receive Title II Social Security benefits (OASDI) and/or Title XVI Supplemental Security Income payments (SSI) and to apply such benefits to reimburse the cost of current care and maintenance for the children. The Policy, Procedures and Training Unit worked closely with Florida Attorney General's Office, which authored the Amicus brief. The AGO joined this brief, and the PPTU input brought a positive result to Arizona.

Significant Appellate Decisions

- *Jesus M. v. Ariz. Dept. of Econ. Sec.*, 203 Ariz. 278, 53 P.3d 203 (App. 2002): The juvenile court terminated a father's rights to his daughter under A.R.S. § 8- 533(B)(4) (length of sentence) based upon the father's six-year prison sentence for burglary. On appeal, the father challenged the termination of his rights arguing that he only had between 16-24 months left to serve at the time of the severance hearing and, therefore, the court should not have found that the child would "be deprived of a normal home for a period of years." In affirming the severance order, the Arizona Court of Appeals clarified that under (B)(4), "what matters to a dependent child is the total length of the time the parent is absent from the family, not the more random time that may elapse between [the severance proceeding] and the parent's release from prison." The Court further noted that the juvenile court must also consider other factors previously identified in *Michael J.* (196 Ariz. 246, 995 P .2d 682) and that it would not disturb the court's resolution of conflicting evidence regarding those factors in the present case. This opinion was significant because it clarified that when termination is sought under A.R.S. § 8-533(B)(4), the juvenile court must consider the parent's total incarceration period and not just the portion of the parent's sentence remaining at the time of the severance hearing.

CIVIL DIVISION

The Civil Division provides high-quality, effective, and innovative legal representation to the State of Arizona, its agencies, officers, and employees acting within the scope of their employment. The Civil Division consists of attorneys and staff who focus on specialty areas of civil law. In addition, the Civil Division provides day-to-day legal services to a number of departments, boards, and commissions of the State of Arizona.

Administrative Law Section

The Administrative Law Section (ALS) is responsible for representing over 60 state agencies, including the Secretary of State, the Treasurer, the Department of Administration, the Department of Corrections, the Department of Juvenile Corrections, the Department of Gaming, the State Lottery, the Coliseum and the Arizona Court system (Supreme Court, Court of Appeals, Superior Courts, Clerks of the Court and each entity's individual programs). In addition to the assigned client agencies, ALS serves as a resource for almost all state agencies and other sections of the Office of the Attorney General in the areas of procurement, finance, and commercial law. An example of such assistance is the BRIT's project described below. The mission of ALS is to assist all of the agencies, boards, and commissions of the state in fulfilling their individual missions. ALS has performed its function with limited resources. The majority of ALS's client agencies are represented by only eight general fund lawyers. ALS provides value to the state by providing proactive and preventive advice on a daily basis. ALS measures its successes not only by cases it wins, but also by the problems it resolves and litigation it helps the State to avoid.

Accomplishments

- **BRITS** The Department of Revenue needed to improve its computer information system before the end of 2003 or risk the system being inadequate to meet the Department's tax collection needs. The Department and ALS prepared an RFP for

this purpose and the Department awarded a contract valued at more than \$100 million. When preparing the RFP, ALS advised the Department of the possibilities of vendor protests. Because of this advice and the efforts of the Department, ALS successfully defended a two-week protest challenging the Department's activities.

- **Gaming Compacts** ALS, along with the Governor's office and the Department of Gaming, was involved in drafting the gaming compacts that were ultimately adopted by Proposition 202.
- **Department of Housing.** ALS, along with individuals at the newly created Department of Housing, were involved with implementing the Legislature's creation of the Department of Housing as an independent state agency.
- **New Programs.** ALS, without additional funding, has been given a number of additional responsibilities including the following:
 - Document Preparer regulation (representation of the Administrative Office of the Courts);
 - Public Fiduciary regulation (representation of the Administrative Office of the Courts); and
 - Maricopa County Justice Courts (Presiding Judge has administrative supervision of the Justice Courts).

Bankruptcy and Collection Enforcement Section

The Attorney General's Bankruptcy and Collection Enforcement Section collects debts owed to the State of Arizona and is funded by a percentage of those debts collected. Presently, the Section collects debts on behalf of approximately 65 state agencies or agency programs.

Accomplishments

- Section collected \$13,717,702 that resulted, after the Section's expenses, in a refund to the various state agencies or programs of approximately \$2,700,000, in addition to the 65 percent of the revenues previously paid to the client agencies for a total of \$11,550,249.48.
- Section opened 3,229 cases and closed 3,047 cases.

Major Cases

- **Arizona State Land Department v. Don Kelland Materials, Inc. (DKM):** DKM trespassed onto state trust land and removed state owned minerals to use in its mining operations in Yuma County. It filed a Chapter 11 bankruptcy petition in April 2001. A claim was filed for damages caused by the trespass to which DKM objected as to the amount and nature of the claim. DKM listed the entire claim as general unsecured and sought to pay less than 20 cents on the dollar for general unsecured claims. After conducting extensive discovery, the State was able to obtain a settlement in which the Department received an administrative expense claim for \$240,000. The agreement also required the Debtor to complete extensive reclamation work on the State's property.
- **McRae Investments, Inc. II, et al. v. State of Arizona, Case No.1 CA-CV01- 0582:** The primary issue was whether the State is required to renew its judgments. Prior case law has held that the State is not so required; however, the case law is approximately fifty years old and was directly challenged as out of date. Following the successful appellate action, the Foreclosure Unit filed a foreclosure action on the property. That action is currently in litigation. The amount at issue is approximately \$900,000. The client agency is the Arizona Department of Transportation.
- **In re Microage:** Microage objected to the Arizona Department of Revenue's Proofs of Claim, seeking approximately \$1 million in

corporate refunds for enterprise zone tax credits. The State defended based on sovereign immunity. Microage claimed the State abrogated its sovereign immunity in bankruptcy court when it enacted the Constitution. The Arizona Bankruptcy Court rejected Microage's argument, holding that states have sovereign immunity in bankruptcy court. The Court held that it had jurisdiction to determine whether Microage could offset any potential refunds against the Department's claims against Microage, but that Microage could not obtain an affirmative recovery from the State.

Education and Health Section

The Education and Health Section (EHS) is comprised of the Education Unit and the Health Unit. The attorneys and staff in each unit provide day-to-day legal services to the Department of Health Services and its numerous divisions and bureaus, the Department of Education and its divisions, the Arizona State Board of Education, the School Facilities Board, the Arizona State Board for Charter Schools, the Arizona Schools for the Deaf and the Blind, and the Arizona State Commission on Postsecondary Education.

Accomplishments - Health

- Successfully negotiated several settlement agreements with large environmental labs that conduct water testing in Arizona. The agreements make certain that the labs will continue to employ accurate testing methods to ensure safe drinking water for Arizona residents.
- Assisted the Attorney General's Office in successfully defending the State's Sexually Violent Persons Act (Act). The Arizona Supreme Court found the Act to be constitutional in the case of *In re the Matter of Leon G., -AZ. -I 59 P.3d 779* (Dec 16, 2003). Also successfully defended several post Leon G. appellate challenges to SVP commitments.
- Assisted the Department of Health in prosecuting a significant increase in the number of enforcement cases in the areas of childcare, emergency medical

technicians, and WIC, a federal food supplement program.

- Assisted the Department of Health in drafting the Maricopa County Regional Behavioral Health RFP, a \$450 million contract for the coordination and delivery of all Medicaid funded behavioral health services in Maricopa County. Provided ongoing legal advice in the development of the RFP and will continue to be involved throughout the evaluation and award process.
- Assisted the Department of Health in adopting and implementing a rule (A.A.C. R9-21-507) requiring the State Hospital to be consulted prior to the placement of patients at the Hospital. This will help alleviate the problem of inappropriate placements at the Hospital. Also negotiated a letter agreement whereby the Hospital is able to receive Title XIX funds for certain individuals committed to the Hospital.

Accomplishments - Education

- Assisted the State Board of Education in adopting and implementing rules pertaining to the operation of Proposition 203, passed by the voters in November 2002, regarding English language learners.
- Represented the State Department of Education in hearings relating to the discipline/revocation of certificates of certificated persons.
- Assisted the School Facilities Board with respect to bonds issued to fund school construction.
- Assisted the Commission on Postsecondary Education regarding rules addressing account balance limitations for its College Savings Program. The rules also contained other language that would conform to federal law.

Major Cases - Health

- **Arnold v. Sarn, CIV89-1466 (Arizona Superior Court)**. The Department is working to meet requirements of the Exit

Stipulation to satisfy the Final Judgment in this case. Health Unit attorneys have provided legal advice regarding the development and implementation of a Quality Management (QM) system. The QM system is required by the Exit Stipulation and will measure the Department's compliance with the other criteria in the Exit Stipulation.

- **J.K. v. Eden, CIV91-261 (Arizona Superior Court)**. The parties reached a settlement in 2001 that included restructuring and expanding mental health and substance abuse services to Title XIX children. Health Unit attorneys successfully negotiated a significant reduction in requested attorneys' fees for 2002 and negotiated a cap on plaintiffs' attorney fees for FY2003. In addition, Health Unit attorneys provided legal advice on the development of child and family teams in the children's behavioral health system.
- **Tri-City Behavioral Health v. ADHS, CA-CV 02--742 (Arizona Court of Appeals)**. Claim by Tri-City for over \$1 million in unpaid claims for behavioral health services provided. Health Unit attorneys successfully defended this action at the administrative and superior court level. The case has been argued to the Court of Appeals and a decision is pending.
- **Tucson Women's Clinic v. Eden (Ninth Circuit Court of Appeals), from Federal District Court Case CIV00-141**. Plaintiffs contend that the recently enacted state licensing statutes and regulations requiring abortion clinics to ensure that their practices and facilities are safe unduly burden a woman's right to choose an abortion. In the Federal District Court, EHS successfully defended the constitutionality of a majority of the state statutes and regulations relating to the licensing of abortion clinics. The case is now on appeal to the Ninth Circuit Court of Appeals. Oral arguments have been set in that Court for late November 2003.

Major Cases - Education

- **Somerton et al. v. State**. Two related lawsuits challenging the Building Renewal

Fund established by Students First as being insufficiently funded. The State lost in the trial court. The Arizona Court of Appeals overturned the decision in August. Plaintiffs have recently filed a petition for review in the Arizona Supreme Court.

- **Crane et al. v. State**. Five Arizona school districts seek a declaratory judgment that the current school finance system violates the Arizona Constitution, Art. 11, § 1, because the State failed to provide at-risk students with the programs and funding that are necessary and appropriate to achieve the State's prescribed academic standards. The matter is set for trial in March 2004.
- **Flores v. State**. Ten-year-old lawsuit challenging the State system for educating English language learners. In June 2002, the U.S. District Court Judge ruled that current funding levels for English language instruction programs were adequate, as long as the State continued to study the matter. Over the past year, Education Unit attorneys have advised the Department and Board of Education on compliance with the Consent Decree, including advice on rulemaking issues.
- **Enforcement of Charter School Laws**. Successfully represented in a number of hearings revoking charters from individuals who were not complying with their charter contract and/or applicable law. Also advised the Charter School Board and Board of Education concerning the withholding of 10% of state funds from non-compliant charter schools and, where appropriate, negotiated settlement agreements on behalf of the State.
- **Flex Tech v. School Facilities Board**. A former State contractor seeks approximately \$1 million for services it claims to have rendered to the School Facilities Board under a now-terminated contract that required it to assess building deficiencies in schools. Education Unit attorneys successfully defended the State at the administrative hearing level and, this last year, persuaded the Superior Court that Flex Tech was not entitled to the evidentiary

hearing it sought. The Superior Court should rule shortly on Flex Tech's claim that the State acted arbitrarily and capriciously in rejecting its claim for additional funds.

Employment Law Section

ELS advises State executive department agencies and the judicial department on employment law related issues, represents State executive department agencies and the judicial department in administrative and disciplinary hearings, represents the State before the Equal Employment Opportunity Commission, represents the State in workers' compensation claims, and provides liability defense for the State in state and federal court.

Accomplishments

During FY2002-2003, ELS provided more than 5400 hours of advice, training and administrative representation, and more than 15,900 hours of liability and workers' compensation defense representation at a cost substantially below that available through outside counsel.

Liability Management Section

The Liability Management Section (LMS) represents the State of Arizona in lawsuits alleging State liability for personal injuries, property damage and constitutional law violations. The Section's purpose is to provide a quality defense that achieves a fair result at a competitive cost to the taxpayers.

Accomplishments

An ongoing goal for LMS is assisting the Department of Administration and various State agencies in identifying and addressing possible liability issues before losses occur. For instance, LMS assisted in training new probation officers at the Probation Officer Training Academy. Likewise, potential liability issues were addressed with other agencies to reduce or eliminate losses. The Section has also been instrumental in helping ADOT address insurance and indemnification issues that impact tort litigation.

Last year the Section handled a number of high profile cases with high exposure potential. Due to the level of practice of the attorneys involved and their expert handling of issues, these cases were resolved advantageously to the State. LMS continues to seek new ways to improve its high level of practice by application of technology, training, and research.

Major Cases

- **Burke v. State.** Involved the proper method of determining attorney fees. The trial court had applied the common fund doctrine. On appeal, Division Two agreed that the common fund doctrine was incorrectly applied against an opponent in a contract case and correctly held that the lodestar method of determining fees applied. LMS' work on this case saved the State millions of dollars in attorney fees.
- **Golden v. State.** A Pinal County Judge ordered DOC to justify the basis for removing property from inmates pursuant to DOC's new standardized property policy. On Special Action, the Court of Appeals set aside the Order, finding that DOC had acted properly and within its authority.
- **Hook v. State.** The Court terminated a Consent Decree that had been in effect for over twenty-five years. The Decree related to, among other things, how inmate mail had to be handled and inspected. The Court terminated the Order pursuant to the PLRA after Motion by our attorneys, finding that DOC's procedures comply with the Constitution.

Licensing and Enforcement Section

LES lawyers represent, advise, and prosecute cases before agencies such as the Accountancy Board, Dental Board, Department of Liquor Licenses and Control, Arizona Medical Board, the Nursing Board, the Registrar of Contractors and other agencies which license professionals, occupations, or businesses. The legal services provided by this section include: advising and counseling; writing legal opinions, initiating and defending lawsuits and appeals; conducting administrative hearings and other contested matters; drafting and reviewing

bonds, contracts, forms and other legal documents and helping client agencies in drafting rules, policies, and procedures. In the course of FY2003, LES attorneys attended 652 board and commission meetings, litigated 512 administrative hearings and filed or transmitted 1,251 pleadings or legal memoranda.

Accomplishments

Basic Regulatory Investigative Course (BRIC) Assisted the Arizona Government University (AzGu) in developing and presenting a training course for agency investigators. The course is designed as a six-week (once a week) training course. After two successful pilot efforts, the first official course is currently taking place. It is AzGu's goal to make BRIC mandatory for all agency investigators.

Clandestine Drug Laboratories Remediation Provided guidance and advice to the Board of Technical Registration in drafting of rules for clandestine drug laboratory rehabilitation. In 2002, the Legislature ordered the clean-up of clandestine drug laboratories that manufacture methamphetamine, LSD and ecstasy. Firms and workers who deal with such clean-ups are now regulated by the Board. The Board was also charged with determining best standards and practices for the remediation of these laboratories. With our assistance, rules regarding initial certification of these firms and individuals, as well as the standards under which they must practice, were adopted.

Major Cases

- **Accountancy Board v. Back and Montes.** The Enforcement Unit has continued to oversee the Arizona State Board of Accountancy's investigations of alleged departures from professional standards on audits of large companies and publicly traded companies. In FY2003, Unit Attorneys completed the investigation and prosecution of a partner in the firm of KPMG, John Back, who admitted to diverting over \$250,000 of audit fees from KPMG to a bogus company that Mr. Back controlled. Mr. Back agreed to relinquish his CPA license, pay the Board's costs of over \$10,000 and signed a Consent to the

Board's Order in which he was not permitted to deny his theft of KPMG's fees.

The Unit also prosecuted another licensed CPA, Sam Montes, an audit manager on some of the KPMG audits in issue. While denying any direct knowledge of Mr. Back's diversion of fees, Mr. Montes turned a blind eye to Mr. Back's deception and received \$6,500.00 in "bonus" checks from Mr. Back's company. Mr. Montes consented to the Board of Accountancy's order suspending his license for 18 months. The Board's order provides that the suspension period shall be followed by a five year probationary period in which Mr. Montes will be subject to peer review for all attestation (audit) services he performs. Mr. Montes also agreed to reimburse the Board's investigative costs of \$10,000.

- **Arizona Medical Board v. Lior Kahane, M.D.**: Revocation of Dr. Lior Kahane's license to practice medicine for the negligent care and treatment of 15 patients. The Board found that Dr. Kahane fell below the standard of care in his treatment of all 15 patients. The hearing lasted 14 days and was conducted over a period of four months. The case is currently on appeal to the Superior Court.
- **James Allender, Ph.D. v. Arizona Board of Psychologist Examiners.** The Board found that Dr. Allender engaged in unprofessional conduct by committing a misdemeanor involving moral turpitude and that his plea of no contest was conclusive evidence of his commission of that offense. The Board issued Dr. Allender a decree of censure. The Court of Appeals affirmed the Board's disciplinary action against Dr. Allender.

Natural Resources Section

The mission of the Natural Resources Section is to aid client agencies to protect, enhance, and sensitively utilize the natural resources of the State of Arizona – primarily land, water and minerals – for economic and recreational benefits. This mission is accomplished through excellent professional legal representation and

advice to respective clients and a cooperative team effort.

Accomplishments

- Increasing communication between Luke Air Force Base and the local jurisdictions in the vicinity of the Base.
- Successfully negotiated a condemnation of State trust land to satisfy the Hopi settlement agreement.
- Represented the Arizona State Land Department before the Arizona Navigable Stream Adjudication Commission.

Major Cases

- **Center for Biodiversity v. Smith, et al., LNR 02-0008; State v. Center for Biodiversity, LNR 02-0086:** Complaint against State of Arizona and the Arizona Department of Water Resources seeking to curtail groundwater pumping outside of Active Management Areas. Plaintiffs alleged that such pumping interferes with public access to flowing streams under the public trust doctrine. After a motion to dismiss was denied in Superior Court, the Court of Appeals granted a special action and directed that the complaint be dismissed. The Supreme Court denied a petition for review.
- **Vistoso Partners, LLC v. ASLD, et al., LNRO2-0064.** Complaint seeking rescission, specific performance, or damages in connection with an auction of State trust land in Tucson and the forfeit of an almost \$2,000,000 down-payment, plus interest, or specific performance, or damages for fraud or breach of contract. Through mediation, this case and a related claim were settled for \$162,500.
- **State of Arizona ex rel. Arizona State Parks v. Whetstone Springs Holdings, L.L.C. et al.** Condemnation adding approximately 160 acres to Kartchner Caverns State Park to protect Kartchner Caverns from development that could pose significant environmental damage. Settled.

Tax Section

The Tax Section represents and advises State agencies in administrative hearings and court proceedings involving tax matters, tax disputes, and unclaimed property. Tax's primary client is the Arizona Department of Revenue. The section also handles tax issues for the Arizona Department of Transportation, the Department of Insurance and other state agencies.

Major Cases

- **Arizona Department of Revenue v. Raby, 204 Ariz. 509,65 P.3d 458 (App. 2003).**
Many taxpayers claimed that a provision granting a \$2,500 tax deduction for state or federal pension income applied to each spouse. The Court of Appeals held that the deduction applied only to the spouse who received a pension. The Arizona Supreme Court denied the petition for review.
- **Ladewig v. Arizona Department of Revenue:** The Tax Court approved the Stipulation of Settlement in this class action tax case. Pursuant to the Settlement, the State may pay refunds to hundreds of thousands of taxpayers, but there is a cap on the potential exposure to the state of \$350 million. The Settlement is on appeal. 1 CA- TX 03-0003. If affirmed, refund payments should start in September 2004.
- **Kocher v. Department of Revenue, Ariz., 80 P.3d 287 (App. 2003).** The taxpayers argued that they should not have to pay Arizona income tax on over \$5 million in income in 1995 because they were actually Texas residents even though they lived in Arizona throughout that year. The trial court found that the taxpayers were Arizona residents and the court of appeals affirmed that decision. A petition for review to the Arizona Supreme Court is pending.
- **Kerr v. Killian.** Since 1990, Arizona started its tax calculation for individuals with their federal adjusted gross income. The taxpayers contend that this discriminates against federal employees because state employee pension contributions are not included in the federal adjusted gross income, but federal employee pension

contributions are included. The Arizona Court of Appeals first held that there is no discrimination and then, on a motion for reconsideration, reversed itself and held that the tax statutes are discriminatory. The Arizona Supreme Court accepted review and held oral argument on December 9, 2003.

Transportation Section

Transportation's (TRN) mission is to help create a safe and efficient transportation system by providing prompt, quality legal services to the Arizona Department of Transportation (ADOT) and the Arizona Department of Public Safety (DPS). TRN handles cases and advises ADOT on matters related to highways, transportation planning, motor vehicles, administrative service and aeronautics. This work includes actions in which the State takes private property for State projects and compensates the property owners, property damage claims, construction contracts, procurement contracts, vehicle registration, license suspensions, and personnel matters.

TRN also represents DPS in criminal matters, licensing issues, contract/personnel issues, subpoenas, public records, access to criminal history record information, and the statewide registered sex offender database and other legal questions.

Accomplishments

TRN continued to assist the Attorney General and DPS in improving the safety of Ford Crown Victoria police cruisers. Improvements include kits to protect gas tanks from puncture, kevlar trunk packs to prevent gas tank punctures through vehicle trunks and research on a fire suppressant system. TRN successfully convinced a federal district judge that ADOT could lawfully prohibit the use of materials on highway projects by subcontractors where use of the materials would damage a historic or cultural resource.

Major Cases

- **State v. Rivera Masonry.** Condemnation case where the State's offer of \$1.1 million was rejected. The case was tried to a jury for four days and the jury rejected the

property owner's request for \$2.45 million and awarded \$1,023,000, approximately \$800,000 under the State's offer to settle.

- **Marnita Sheehan v. ADOT.** The Motor Vehicle Division of ADOT dismissed Marnita Sheehan, a fifteen-year employee, on June 19, 2003. The grounds for dismissal were misuse of State equipment for personal use and misuse of her office position; obtaining a thirty-day general use permit for a personal vehicle when not entitled to the permit; and discussing an ongoing official investigation with another MVD employee in violation of an ADOT/MVD admonition. Ms. Sheehan appealed the dismissal. Following a hotly contested two-day hearing, Hearing Officer Harold Merkow recommended that the State Personnel Board uphold Sheehan's dismissal. On September 22, 2003, the State Personnel Board followed the recommendation of the Hearing Officer and upheld Sheehan's dismissal.
- **Ortiz v. ADOT.** Claim for racial discrimination. The plaintiff sought compensatory damages in the amount of \$20,000 and pain and suffering of \$300,000 in the U.S. District Court. After a four-day trial, the Magistrate Judge recommended dismissing all of plaintiff's claims.
- **Rode v. State of Arizona.** Plaintiff claimed she was the victim of sexual harassment by her supervisor and a hostile work environment. She sought compensatory damages of \$100,000 and pain and suffering of \$300,000. The Judge returned a verdict in favor of the State, dismissing all of plaintiff's claims.

CIVIL RIGHTS DIVISION

The Civil Rights Division ("Division") includes the Compliance and Conflict Resolution Section and the Litigation Section. Both sections work cooperatively to investigate allegations of discrimination, provide conflict resolution services, file civil rights enforcement cases in state and federal court and provide community education. The Division also works with the Arizona Civil Rights Advisory Board ("ACRAB") and maintains the "Attorney General's School Hotline" and the "Hate Crimes Hotline." Despite severe budget cuts that impacted the Division, its major accomplishments this year include:

Legislation. The Division, through the Litigation Section, has been studying predatory lending laws nationally and meeting with community groups throughout the State to draft appropriate legislation addressing predatory lending in Arizona.

Hate Crimes. The Division continues to maintain its Hate Crimes Hotline to provide a resource for victims or those having information to report hate crime activity. The Compliance Unit continues to investigate civil hate crime allegations in cooperation with law enforcement agencies.

Attorney General School Hotline. The Division created the framework for the "Attorney General's School Hotline," which provides an anonymous toll-free number for the general public to report incidents of school-related violent activity and behavior. During this reporting period, approximately 100 calls were received by the Conflict Resolution Unit. The Hotline operates from 8:00 a.m. -5:00 p.m., Monday through Friday, with an after-hours message service. Hotline staff works in cooperation with 911 operators, law enforcement, and education officials.

Compliance and Conflict Resolution Section

The Compliance Unit receives and investigates administrative charges of discrimination in the areas of housing, employment, disability, public

accommodations and voting. The Unit also participates in special civil rights projects, provides education and outreach to the public, and conducts surveys.

The Conflict Resolution Program provides conflict resolution services statewide, including mediation, facilitation, conciliation, and training. The mediation programs encompass child welfare, civil rights, youth/gang, truancy, victim-offender, and other court and agency issues. The Program also offers school violence prevention, intervention programs and services, peer mediation training, education and outreach services on conflict resolution.

Accomplishments

- Compliance Unit experienced an increase in the per investigator charge resolutions by 40 percent, from 60 to 91 cases per investigator. As a result, total charge resolutions were up 10 percent from 782 in FY2002 to 860 in FY2003. At the same time, intake of new complaints was off slightly, down 4 percent from 73 per investigator in FY2002 to 70 per investigator in FY2003.
- The total number of new complaints filed by the public was down by 23 percent from 867 in FY2002 to 664 in FY2003. The reduction in the number of new charges filed, coupled with the increase in charge resolutions, resulted in an overall reduction in the total pending inventory of cases of 22 percent from 880 in FY2002 to 683 in FY2003.
- The dollar value of pre-determination settlement agreements provided victims of discrimination increased substantially to \$1,008,459.00 in benefits achieved during FY2003. This represents an increase of \$638,166.00 or 272 percent, compared to the \$370,293.00 in benefits obtained in FY2002.
- Conflict Resolution Program handled 1183 mediation referrals. The Program made a concerted effort to increase the number of

housing mediations that it conducted for the Division, and in one case mediated an agreement that resulted in \$530,000.00 in benefits to the Complainant. The Program also increased its agreement rate slightly from 90 percent in FY2002 to 90.74 percent in FY2003. A further standard measurement of the mediation program is a satisfaction survey of all participants, which revealed that the Program maintained a satisfaction rate of 99 percent.

- The Program conducted eight training sessions resulting in 150 new mediators for the Arizona Supreme Court's Administrative Office of the Courts. These new mediators will serve the courts in Coconino, Maricopa, Pinal, and Yuma Counties. Additionally, the Unit provided mediation training to 50 students at the University of Arizona Law School. The City of Mesa also benefited from advanced mediation training for 25 of its mediators.

Litigation Section

The Litigation Section provides legal assistance to Division investigators; seeks the voluntary resolution of complaints of discrimination; and files civil rights enforcement actions in state and federal court involving employment, housing, public accommodations, disability, and voting rights.

Accomplishments

- **State v. Phoenix Union High School District:** Involved a pattern and practice of facial discrimination by the District against a class of older teachers and other certified employees whom it paid less to substitute teach based on their age in violation of the Arizona Civil Rights Act. Following a bench trial, the Court ruled that the District's compensation plan was discriminatory, ordered back pay with interest in the amount of \$32,000 and enjoined the District from continuing to discriminate in compensation.
- **State v. Hispanic Air/Household Bank:** Joint enforcement action alleging violations of the Civil Rights and Consumer Fraud Acts arising out of the sale and financing of

air conditioners to predominantly Spanish-speaking victims. The five-week bench trial began in May 2003.

- **State v. Household International, Inc:** The Arizona Attorney General's Office took the lead in coordinating the Attorneys General and Financial Regulators of all 50 states and the District of Columbia in a nationwide consumer fraud lawsuit against Household International, Inc. concerning alleged predatory mortgage lending, resulting in consent judgments for an unprecedented \$484 million to consumers nationally, and \$7.1 million to approximately 12,000 Arizona consumer victims. The injunctive relief obtained substantially changed the lending practices of one of the largest sub-prime mortgage lenders and is a national model. Arizona's involvement in the lawsuit grew out of a joint civil rights and consumer fraud investigation. All ten individual civil rights complainants also received compensation from Household for their fair housing claims.
- **State v. Superstition Realty, Inc:** The Attorney General's Office sued to protect the rights of a single mother who was subjected to sexual harassment in employment at a small realty firm. Under the settlement, the victim received \$24,400 and the State received \$500 for monitoring and enforcement.
- **State v. Ritchie.** The Attorney General's Office filed suit against a landlord for failing to make a reasonable accommodation for a disabled tenant. A consent judgment was entered into, providing \$500 for the tenant and fair housing training for the landlord.
- **State v. Roth Enterprises.** Lawsuit filed alleging that an apartment manager discriminated against families with children by refusing to rent to them and by steering them to less desirable properties. The Section obtained a Consent Decree that required the defendants to adopt new policies and engage in fair housing training. In addition, the owners agreed to provide a free fair housing training, in conjunction with the local housing authority, for other small apartment owners and managers. The

owners paid \$18,500 in damages to the victims and the State's costs.

- **State v. Fiesta Casitas.** This lawsuit sought retrofitting, other structural modifications and monetary damages from the architect, builder and owner of a large apartment complex for failing to comply with the state and federal Fair Housing Act Accessibility Guidelines. The defendants agreed to numerous modifications to facilitate greater accessibility for disabled residents, paid the victim \$3,000 in damages and paid the State \$20,500 for its costs.
- **State v. Citation Gardens.** This lawsuit was brought because of defendants' failure to allow a disabled individual to purchase one of the cooperative apartments upon learning of the disability. The Section obtained a Consent Decree providing damages to the victims, injunctive relief and payment of the State's costs.
- **State v. Abdominal Surgeons.** This lawsuit was brought because the defendant denied the services of a sign language interpreter in connection with a June 3, 1999 surgery at St. Luke's Medical Center and in office consultations, which created a barrier to effective communication. The Section obtained a Consent Decree requiring defendant to adopt new policies for provisions of sign language interpreters, engage in Americans with Disabilities Act training and provided \$17,000 in damages to the victim and \$3000 in State costs.

Arizona Civil Rights Advisory Board (ACRAB)

This seven-member governor-appointed Board works in conjunction with the Division. The Board continues to study civil rights issues that impact the community.

CRIMINAL DIVISION

Capital Litigation Section

The Capital Litigation Section (CLS) handles all appellate proceedings involving the more than 120 death-row inmates in Arizona. Those proceedings include the direct appeal to the Arizona Supreme Court and the United States Supreme Court following conviction and sentencing, state post-conviction relief proceedings in the trial court and the Arizona Supreme Court, and federal habeas proceedings in federal district court, the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court. The Section also assists trial lawyers with research and advice regarding death penalty issues. The Section conducts a death penalty seminar for prosecutors every year in connection with the Arizona Prosecuting Attorneys' Advisory Council.

Accomplishments

In FY03, Section members have handled a number of post-conviction evidentiary hearings in state and federal court. The evidentiary hearings frequently involve claims of ineffective assistance of counsel, including claims that the defendant's mental health problems were not adequately presented to the trial court. Additionally, Section members have assisted trial attorneys with pre-trial and trial issues.

Major Cases

- **State v. Ring ("Ring III")**. In its decision, the Arizona Supreme Court consolidated 31 capital cases pending on direct review to resolve unanswered questions created by the United States Supreme Court decision in *Ring v. Arizona* ("Ring III"). Ring III adopted the State's position that Arizona's revised capital sentencing scheme does not offend constitutional ex post facto or double jeopardy prohibitions; that Sixth Amendment Ring error can be harmless; that prior convictions under A.R.S. § 13-703(f)(1) are exempt from the Ring II jury requirement; that the aggravating circumstance in A.R.S. § 13-703(f)(9) (age of the victim) can be

implied by the jury's guilty verdict; that an aggravating circumstance is established under Ring II where a defendant stipulates, confesses or admits to the existence of that circumstance; that the Ring requirement does not extend to the trial court's decision that the defendant was a major participant in felony murder cases; and that the State did not waive its harmless error argument. However, the court disagreed with the State's position in holding that the Ring jury requirement extends to prior convictions under A.R.S. § 13-703(f)(2); that the aggravating circumstances of pecuniary gain and multiple homicides are not implicit in the jury's guilty verdict; that harmfulness is not established by upholding one aggravating circumstance; and that Ring requires a jury to find mitigating as well as aggravating circumstances.

- **State v. Towery**. The Arizona Supreme Court held that the rule announced in Ring II does not apply retroactively to cases on collateral review. The decision affects approximately 75% of all Arizona capital cases. The court adopted the State's position that the decision in Ring II is procedural in nature rather than substantive, and that the procedural rule is not a "watershed" development for retroactivity purposes under *Teague v. Lane*.
- **Summerlin v. Stewart**. In its decision, the Ninth Circuit addressed the same issue resolved by the Arizona Supreme Court in *Towery*, and reached the opposite conclusion. The Ninth Circuit found the Ring jury rule to be substantive or, alternatively, a watershed rule of criminal procedure. Under *Summerlin*, capital defendants in cases that had reached the collateral proceedings stage would be entitled to re-sentencing or commutation.

Criminal Appeals Section

The Criminal Appeals Section represents the State of Arizona in the Arizona Court of Appeals, the Arizona Supreme Court, and the United States Supreme Court when criminal defendants appeal their non-capital felony convictions. The Section also represents the State in the United States District Court and the Ninth Circuit Court of Appeals when those defendants challenge their convictions and sentences in federal habeas corpus petitions. In addition to representing the State in criminal appellate litigation, the Section provides periodic legal advice to county attorneys throughout Arizona regarding criminal trial prosecutions.

Accomplishments

The Section filed approximately 1,162 briefs, habeas responses, and other substantive responses in FY2003.

Major Cases

- **Arizona v. Gant.** In April 2003, the United States Supreme Court granted our petition for certiorari in *Arizona v. Gant*—whether police may search a recent occupant’s vehicle incident to his arrest when the person is unaware of the police until after he exits the vehicle. The Arizona Court of Appeals, Division Two, had held *Belton* inapplicable under those circumstances. After briefing had been completed, the Supreme Court vacated the Court of Appeals’ opinion and remanded the matter for reconsideration in light of the Arizona Supreme Court’s recent decision in *State v. Dean*, which rejected the Court of Appeals’ reasoning.
- **State v. Flores-Zevada.** Mr. Flores-Zevada killed a police officer while committing other felonies. He argued on appeal that testimony about his suspicious activities months prior to the murder constituted inadmissible Rule 404(b) other-acts evidence. AGO countered that those activities constituted intrinsic evidence not subject to Rule 404(b). Numerous jurisdictions have held that evidence of events/crimes preceding the commission of

the charged conspiracy may constitute intrinsic evidence, even if they pertain to events or crimes predating the range of dates in the indictment. The Court of Appeals has heard oral argument, and the case is pending decision.

- **State v. Viramontes.** Viramontes and Beck were convicted of murder and received natural-life sentences. On appeal, both defendants claimed that the general sentencing aggravators found in A.R.S. § 13–702 did not apply to first-degree murder and that only the more stringent factors listed in A.R.S. § 13–703 could be used. The Arizona Supreme Court agreed. In response to the Viramontes decision, the Attorney General’s Office proposed legislative changes to § 13–703 that allow trial courts in non-capital first degree murder cases to consider the less onerous §13–702 factors when choosing between a natural life or 25-years-to-life sentence. The amendments became law in September 2003.
- **State v. Sepahi.** Sepahi verbally “baited” a 14-year-old girl and then shot her in the stomach at point-blank range. He was convicted of aggravated assault and sentenced under the dangerous crimes against children sentencing enhancement statute, A.R.S. § 13–604.01. Division Two of the Arizona Court of Appeals acknowledged that Sepahi had deliberately shot the girl but held that he had not committed a dangerous crime against a child because he had not shot her because she was a child or in her “capacity as a child,” and because Sepahi was not necessarily an ongoing threat to Arizona’s children. The Arizona Supreme Court vacated the Court of Appeals’ opinion and affirmed Sepahi’s sentence, holding that § 13–604.01 requires only that the criminal conduct was focused on, directed against, aimed at, or targeted a person who happened to be a child.

- **State v. Torre.** Phoenix attorney Torre's car struck a pedestrian, tearing her body in half and casting its severed parts hundreds of feet. Torre and his passenger kept driving for about a mile and then walked home. A jury found Torre guilty of negligent homicide as a lesser included offense of second-degree murder. On appeal, Torre claimed the State failed to prove his drinking and speeding caused the victim's death, and that the victim's own conduct in crossing the street improperly and while intoxicated was a supervening cause. AGO argued that to establish legal cause in criminal cases, the defendant's conduct need not be the sole cause of death. Instead, there need only be some evidence that the accident and resulting death would not have occurred but for the defendant's conduct. A decision is pending.

Criminal Prosecutions Section

The Criminal Prosecutions Section consists of three units: the Fraud and Public Corruption Unit, the AHCCCS Fraud Unit and the Drug Unit.

The Fraud and Public Corruption Unit (FPC) prosecutes white collar crime and fraud by individuals and organized criminal groups and organizations. FPC typically prosecutes criminal fraud in areas such as securities, insurance, real estate, banking, taxes, government, telemarketing, computers, welfare and other areas of financial activity. The Unit also focuses on gang related crimes and handles conflict matters from other counties.

The Drug Unit combats drug trafficking and money laundering organizations operating within Arizona. The Unit aggressively investigates and criminally prosecutes individuals and organizations involved in drug trafficking and money laundering. Additionally, the attorneys in this Unit provide legal advice and training on a statewide basis on issues involving search and seizure, research, Arizona's drug laws, prosecuting cases involving children found at drug-related scenes, and courtroom testimony.

The Medicaid Fraud Control Unit is a federally funded unit charged with investigating and

prosecuting: Medicaid (AHCCCS) fraud; fraud in the administration of the Medicaid program; and abuse, neglect or financial exploitation occurring in Medicaid facilities or committed by Medicaid providers or their employees.

Accomplishments

In FY2003, the Criminal Prosecutions Section (CRP) worked with local State and federal law enforcement agencies and departments to actively prosecute more than 1,838 cases involving nearly 14,869 victims whose losses totaled approximately \$678 million.

Attorneys and paralegals participated in education presentations and mock trials for grade school students learning about the criminal justice system. CRP also provides educational and informative brochures and guides for the general public in such areas as elder abuse and Medicaid fraud. CRP attorneys are routinely asked to share their knowledge and experience with government committees, legislators, criminal justice and other State agencies.

Major Cases

- **The Baptist Foundation of Arizona.** The ongoing prosecution of the Baptist Foundation of Arizona (BFA) principals involves more than 11,000 victims with losses of nearly \$560 million. FPC attorneys have defeated numerous defense motions to dismiss or remand this case back to the grand jury. These favorable rulings were appealed to the Court of Appeals and the Supreme Court; however, the appellate courts agreed with the State's arguments and refused to accept jurisdiction.
- **State v. Hamdan et al.** This case, which was indicted in 2000, commenced trial on February 12, 2003, before the Honorable Michael Wilkinson in Maricopa County Superior Court. Four of the original thirteen defendants went to trial, and three were convicted of all charges. This case involved a large-scale marijuana trafficking enterprise that was obtaining marijuana in Arizona and transporting it and selling it, principally in Detroit, Michigan and St.

Louis, Missouri. Sentences ranged from eight years to ten years in prison.

- **State v. Benjamin Franklin Cook.** This case was indicted in August 2000. Defendant Cook was involved in a prime bank fraud, taking over \$43 million from hundreds of elderly victims. He pled guilty to three counts of theft, was sentenced to 17.5 years and ordered to pay restitution in the amount of \$31,571,240.81.
- **State v. Far West et al.** Far West, an Arizona corporation, and two of its employees are charged with numerous criminal violations in connection with the death of two employees. On October 24, 2001, two workers died in a sewage tank after entering without the proper safety or rescue equipment. Santec, a Colorado corporation, is also charged with endangerment and violating safety standards and causing the death of an employee. Santec was a subcontractor working at a site in Yuma, Arizona.
- **State v. Romero.** Defendant was charged with the first-degree murder of Officer Kenneth Collings approximately 15 years earlier. He was also charged with numerous counts of aggravated assault and armed robbery arising from a bank robbery and ensuing series of car jackings. Defendant fled to Mexico where he successfully hid for over 12 years. He was eventually arrested in Mexico and extradited back to the United States. This process took approximately two and a half years. The defendant was convicted of first-degree murder and all other outstanding counts. At the time of sentencing, the first-degree murder conviction was reduced to that of second-degree murder to more closely align the defendant's exposure to that reflected in the agreement between Mexico and the United States Government. The defendant was sentenced to 106 years in prison.
- **State v. Carrington.** Defendant is charged with numerous counts of fraudulent schemes and theft that arose from the fraudulent sale of viaticals between 1996 and 1999. Carrington obtained life insurance policies for persons that had

HIV/AIDS. At Carrington's direction, applicants failed to disclose their medical conditions on the insurance applications. Once the policies were issued, they were sold to investors. Due to the misrepresentations concerning the medical conditions, all the policies were eventually canceled. The loss to investors is \$3 million.

- **State v. Casillas et al.** This wiretap case involves 23 defendants. The defendants are the subject of a large-scale heroin and cocaine trafficking organization. Detectives and agents intercepted thousands of calls on 13 telephone lines. Many of those calls were discussions involving illegal activity, i.e., selling and buying drugs. Numerous individuals were charged by indictment and the defendants are facing lengthy prison sentences. This case dismantled a drug organization which had been operating in the Valley for quite some time.

Tucson Criminal Trials Unit Major Cases

- **State v. Jackson, Valenzuela.** This is a Charter School fraud case in Cochise County involving the Center for Academic Success Charter School. The principals, Douglas Jackson and Florencial Valenzuela, were accused of taking money from the charter school for their personal benefit. Mr. Jackson, a national teacher of the year award winner, has pled to Fraud, a Class Two felony. Charges are pending against the co-defendant.
- **State v. Carroll Carson Sanders.** This is a large-scale fraud case involving a defendant who told over 30 victims that he could obtain repossessed cars for less than value. He then asked for money up front in cash to obtain the vehicles for the victims. He rarely delivered the cars. Losses are over \$1.5 million dollars.
- **State v. Stanley Wade Starr et al.** Several indictments were brought against a group of eight people who used sham legal processes to justify filing liens against police officers who issued traffic citations against members, file declaration of involuntary bankruptcy against the public officials and

record documents that attempted to remove mortgages from their homes or prevent foreclosure. At this time, four of the defendants have been convicted. The remaining defendants are pending trial or are fugitives.

- **In re Rameriz**. George Ramirez and members of his family have been trafficking in marijuana and cocaine since 1999. Working with the FBI in Michigan and a variety of local law enforcement agencies, which also included the assistance of the Department of Agriculture, Mr. Ramirez was caught with over 300 pounds of marijuana. He was arrested, as were a number of his associates. In addition, an In Personam/In Rem forfeiture was filed against George Ramirez, his wife, his parents, his mother-in-law, his sister and others. Further, items forfeited included \$140,000 in cash, two parcels of land, four high-end vehicles, and numerous other items. The Department of Agriculture was able to put a number of items seized into service. In addition, members of a local Boys and Girls Club, located in a high crime area noted for gang activity, is now enjoying the big screen TV. Total estimated value of this property seized in excess of \$350,000.
- **State v. Fremgen et al.** In January 2003, DPS initiated a routine traffic stop on a vehicle that was found to be loaded with over 400 pounds of marijuana. Based on the driver's cooperation, the State was able to obtain conspiracy indictments against two other Arizona men and a New York connection. The prosecution resulted in seizure and forfeiture of houses, vehicles, computer equipment and cash.

Financial Remedies Section

The Financial Remedies Section (FRS) employs Arizona's civil racketeering remedies to combat the effects of organized criminal conduct on legitimate commerce. It focuses on money laundering in drug, fraud and other contexts. FRS supports statewide efforts to deprive drug traffickers and other on-going criminal enterprises of the profits. Attorneys in FRS also advise and provide training to law enforcement on a statewide basis in the areas

of forfeiture, money laundering and racketeering.

Major Cases

- **Salvatore Gravano et al.** Property belonging to Sammy "the Bull" Gravano, former underboss of the Gambino Organized Crime Family in New York, and his family and associates was seized for forfeiture in February 2000. This seizure was based on their operation of an ecstasy distribution ring in Arizona, his infiltration of Arizona businesses with the proceeds of his New York racketeering, and his retention of proceeds of the New York racketeering, some in the form of proceeds of a book about his life. To date, the State has obtained a final judgment of forfeiture of the book proceeds, \$400,000 (to be distributed to the victims of his 19 murders in New York); the income from the ecstasy distribution, approximately \$1 million; and the State's expenses and attorney fees in prosecuting the action, approximately \$900,000. Gravano's infiltrated businesses have been sold to satisfy the judgments, together with his residence, the residence of his son, and the fleet of Lexus vehicles maintained by his family. The trial on the amount of punitive damages due in addition to the forfeitures is pending.
- **In re CP Direct**. This case targeted a fraudulent nutritional supplement sales operation that generated over \$75 million from about 425,000 customers during two years of operation before it was closed down by search and seizure for forfeiture warrants executed on May 23, 2002 and thereafter placed in court-appointed receivership. Attempts by the two principals of CP Direct to separately resume supplement sales under other names were countered by additional searches and seizures executed in Arizona and Nevada in October and December 2002, with more related searches and seizures in Arizona and Michigan in September 2003. The lawsuit defendants joined in a settlement agreement in early March 2003 to the forfeiture of over \$40 million in cash and other property to the state, for refund to customers. The receiver is currently

compiling and locating victims and administering refund compensation from the forfeited funds.

- **Innovative Waste Utilization, LLC.** Innovative Waste is a company which is contracted to dispose of hazardous waste, including waste that is acquired as a result of law enforcement seizures related to the clandestine manufacture of methamphetamine. The investigation revealed that employees of Innovative Waste were diverting previously seized chemicals to criminal organizations for the purpose of manufacturing methamphetamine, rather than disposing of the chemicals delivered to them. Subsequent investigation supported allegations that management employees at Innovative Waste participated in, and/or recklessly tolerated such diversion of chemicals.

The State has seized the assets of Innovative Waste, including the accounts receivable owed by Industrial to Innovative Waste, totaling approximately \$400,000. The State has already forfeited a residence and seized for forfeiture another residence and several vehicles in connection with the marijuana trafficking activities of some of the employees.

- **Cheno/Lanksy/Montero.** This trio of cases exemplifies the relationship among the various component parts of a drug/money laundering enterprise. Cheno and Lanksy were marijuana dealers distributing tons of marijuana. Cheno was stopped with 2,000 pounds of marijuana, and during search warrants an additional 4,000 pounds of marijuana were seized. Lanksy had a trucking business and used the semi-tractor trailers from his business to transport the marijuana. This case resulted in the forfeiture of the business, the semi-tractor trailers, numerous vehicles and two residences. Both drug dealers were using a money transmitter, Montero Enterprises, to launder some of their drug proceeds, including the purchase of a \$660,000 home. The money transmitter, Montero Enterprises, was the subject of an

undercover money laundering investigation and its assets were also forfeited.

- **Unite1Investment Assistance/Vernon Smith.** On August 13, 2002, the Maricopa County Superior Court entered an order of forfeiture in rem for over \$2.98 million in cash previously seized from various financial institution accounts as the proceeds of the fraudulent Unite 1 investment program promoted by fugitive Vernon Smith on the world wide web. The order required these forfeited funds to be held subject to compensatory distributions to thousands of investor victims of the scheme. Vernon Smith was indicted in Arizona for the fraud. To expedite victim restitution, the court appointed a receiver to administer the compilation and distribution on September 4, 2003. The receiver has identified over 4,000 investors and is investigating in its attempt to identify and locate what may be more than 2,000 other investors.

Office of Victim Services (OVS)

The Office of Victim Services (OVS) is a service-oriented Section within the Criminal Division. The staff promotes and facilitates justice and healing for Arizona's crime victims. OVS provides a myriad of services to victims in cases in which the State is represented by the Attorney General's Office. In addition, OVS provides financial and technical support to state, county and municipal law enforcement, custodial, prosecutorial, correctional agencies, and courts, both adult and juvenile, having duties and responsibilities established by Arizona's victims' rights laws. Finally, the Section's duties encompass enforcement of victims' rights laws and resolution of victims' complaints. In addition to these specific goals and objectives, the Office participates in numerous collaborative efforts to provide leadership and increase awareness of the issues crime victims face.

Accomplishments

- In FY2003, OVS advocates provided 119,457 services to 10,252 victims in cases handled by the Attorney General's Office. In addition, 36,630 services were provided

to the 11,600 victims in the Baptist Foundation of Arizona case.

- Victims were provided 3,278 hours of services by 16 volunteer interns, which generated a cost-equivalent savings of \$55,497.

In FY02-03, OVS awarded \$2,478,600 to 62 agencies, and conducted 28 Victims' Rights Training workshops involving 1,955 participants, distributed 274,110 forms to 117 agencies to use to implement victims' rights, conducted 4 audits of county attorneys' offices, published six issues of the Victims' Rights Brief, and distributed it to over 925 justice practitioners and victim advocates, and responded to 35 complaints from crime victims alleging violations of their victims' rights.

Special Investigations Section

The Special Investigations Section (SIS) provides investigative support to law enforcement sections of the Attorney General's Office, as well as to law enforcement agencies across the State of Arizona. SIS agents are State-certified police officers and are assigned to one of six investigative units: Consumer Protection, Tucson, Major Fraud, Financial Remedies and Arizona Health Care Cost Containment System (AHCCCS) Fraud. SIS enjoys additional support from administrative staff and two agents assigned to locations in Nogales and Douglas.

SIS provides expertise in specialized areas of law covered by the Attorney General's jurisdiction, which is not usually available at other law enforcement agencies. These areas include vulnerable adult abuse, consumer fraud, drug trafficking, environmental crimes, gangs and violence, medical fraud, money laundering, white collar crimes and prosecution of defendants who have fled to Mexico. Most cases filed by Consumer Protection (CPA) and by criminal prosecutors from the Attorney General's Office are investigated by SIS personnel.

PUBLIC ADVOCACY DIVISION

Consumer Protection and Advocacy Section

The Consumer Protection and Advocacy Section (CPA) of the Attorney General's Office incorporates two advocacy programs, Consumer Protection and Elder Affairs. In addition, the Agency Unit provides legal representation to four State agencies, the Banking, Real Estate and Insurance Departments and the Securities Division of the Corporation Commission. The Antitrust Unit enforces antitrust violations; and the Tobacco Enforcement Unit enforces the Tobacco Master Settlement Agreement, enforces the Model Nonparticipating Manufacturers Escrow Statute, and works in conjunction with the local law enforcement, to reduce sales of tobacco products to minors.

The mission of the Section is to protect the public from consumer fraud, antitrust and anti-competitive conduct; to provide advocacy and public education from consumer fraud, antitrust and anti-competitive conduct; to provide advocacy and public education on consumer protection issues with an emphasis on fraud and abuse concerning the elderly; to enforce tobacco laws and orders and to help reduce underage sale of tobacco products; and to provide legal representation in judicial and administrative cases and legal advice and assistance in legislative and rule-making matter to state agencies.

Accomplishments

- Through the efforts of the Consumer Protection and Advocacy Section, more than \$7.6 million in money, goods and services were recovered for Arizona citizens. An additional \$44,976 was recovered through the Elder Affairs Program.
- Through court and other administrative actions, the Section recovered more than \$1.6 million in costs, fees and civil penalties.

Judgments in a total amount of \$190,305,183 were obtained by the Section.

- In FY03, this Section received approximately 68,000 telephone calls and approximately 17,500 written complaints.
- The Consumer Information and Complaint Unit mailed more than 8,600 brochures, and the Elder Affairs Unit distributed more than 42,000 brochures on consumer protection topics.
- The Agency Unit prosecuted 255 regulatory actions for the Department of Banking, Real Estate and Insurance.
- Arizona received approximately \$109.5 million in MSA payments in FY2003, which was used to fund Arizona's Health Care Cost Containment System Program. The Tobacco Enforcement Unit was involved in various MSA Enforcement matters in an effort to ensure that the State received the MSA Payments to which it was entitled.
- Throughout FY2003, the Attorney General's Office worked independently and in conjunction with local law enforcement to evaluate retail tobacco merchants' compliance with youth tobacco laws, including the use of youth volunteers to conduct undercover "complacency checks" of merchants and conducting surveys for the Tobacco Education and Prevention Program of all merchants tested.
- The Attorney General's Office obtained "Assurances of Voluntary Compliance" with Exxon Mobil Corporation and BP Products of North America, which required the companies to implement significant practices at numerous stores owned and operated by those companies to prevent tobacco sales to minors.
- Extensive efforts were devoted to drafting and effecting the passage of Arizona's new "Directory Statute," A.R.S. § 44-7111, which contains significant procedural

enhancements to aid in the enforcement of the Escrow Statute, and thereby "safeguard the Master Settlement Agreement, the fiscal soundness of the State and the public health."

Elder Affairs Program

The focus of the Elder Affairs Program was to reduce the incidence of fraud and exploitation of the elderly through education initiatives and preventive strategies. The educational activities conducted by the Office included 37 Life Care presentations and 54 Consumer Fraud presentations. The Office distributed 10,000 copies statewide of the Senior Protection Manual and 5,000 copies statewide of the Life Care Documents.

Three new satellite offices were opened in Prescott Valley, Lake Havasu City, and Apache Junction. Staffed with local volunteers, the satellite offices provide safe accessible locations for seniors who wish to file a complaint with the Attorney General's Office and need assistance to accomplish that task. Volunteers also distribute consumer education materials and provide information and referrals to local resources.

The months of August, September and October 2002 were designated as minority outreach months. During this time period, program staff conducted 32 presentations targeted to the Spanish speaking community. The majority of the presentations were conducted at senior centers with high Hispanic membership. Presentations were also conducted at local schools and learning centers that offer English as a second language course. The attendance at those events totaled 984 participants. The focus of the presentations was how to recognize and prevent consumer fraud targeted to the Hispanic community.

The Consumer Protection and Advocacy Section, along with the National Consumers League, sponsored LifeSmarts, a consumer knowledge competition in which team players competed via the Internet, answering questions that tested their knowledge of personal finance, health and safety, environment, technology, and consumer rights and responsibilities. States sent their winners to the national

competition in April. This year, the Arizona champions were the "Cupcake Eating Pink Flamingoes" from Liberty School, which is part of the Life School College system.

The Arizona Attorney General's Office joined federal and state organizations to help promote the fifth annual National Consumer Protection Week during the week of February 2, 2003. The theme for this year's event was "Information Security Putting the Pieces Together." Attorney General Terry Goddard made five presentations throughout Maricopa County. The events, hosted by local senior centers, drew over 500 senior participants. The Attorney General promoted information security by encouraging seniors to shred personal information usually thrown away with the trash.

During Older Americans Month (May to June 2003), the focus was outreach to rural elderly. During this time period, staff conducted 17 presentations throughout the State. This training benefited approximately 504 seniors and their families. Additionally, 1,314 forms on the topic of elder abuse, neglect and exploitation were distributed. The events during Older Americans Month were combined with three law enforcement meetings and three town halls. Attorney General Goddard conducted the town hall and law enforcement events in the communities of Kingman, Prescott Valley, Lake Havasu City, Tucson, and Green Valley. The theme of the events was the reduction of abuse and exploitation of the elderly.

Major Cases

- **Qwest Corporation.** The Attorney General sued Qwest in September 2001 alleging that Qwest had violated the Consumer Fraud Act by, among other matters, placing unauthorized charges on consumers' bills. A consent judgment with Qwest was entered on July 7, 2003, which required Qwest to change the way it does business, especially with regard to cramming. Cramming is the billing of consumers for products and/or services they did not order or authorize. The judgment also addressed Qwest's failure to disclose charges and its failure to correct errors in billing. A very important part of the judgment requires an independent audit of

Qwest sales practices for the next five years.

As of January 16, 2004, Qwest has refunded consumers \$815,941 in restitution and has paid the State \$1.75 million. Qwest must pay the State an additional \$2 million in tow payments, one in August 2004 and another in August 2005. That money will be placed in the Consumer Protection Revolving fund to reimburse the State for the costs of the litigation, and must "be used by the Attorney General for consumer fraud education and investigative and enforcement operations of the consumer protection division." A.R.S. § 44-1531.01{C}.

- **Household International, Inc.** In December 2002, the Office entered into a consent judgment, along with Attorneys General and financial regulators from at least 30 other states plus the District of Columbia, with Household International, Inc., the parent of Household Finance Corporation, in one of the largest ever state or federal consumer cases. Household agreed to a \$484 million settlement involving unfair lending practices. Arizona led the multi-state negotiations, which resulted in the settlement reached.

The multi-state investigation into Household lending practices alleged that the company violated state laws by misrepresenting home loan terms to consumers and failing to disclose important information. The settlement provides nationwide relief to consumers, with about 12,000 Arizona borrowers receiving \$7.1 million. Household also agreed to make important changes to its lending practices.

- **In the Matter of Pfizer, Inc.** In January 2003, the Office, along with the offices of 18 other Attorneys General, settled an investigation into Pfizer's Direct-To-Consumer (DTC) advertising for Zithromax, a Pfizer product to treat young children's severe ear infections (pediatric acute otitis media or AOM).

DTC advertising usually urges consumers to ask their doctors to prescribe a certain drug,

and specifically in this case, urged the parents of young children to ask for Zithromax because the children would have to take the antibiotic for fewer days than other antibiotics that treat AOM. The Attorneys General alleged that Pfizer's advertisements misrepresented the efficacy of Zithromax in comparison to other antibiotics used to treat AOM by focusing only on Zithromax's dosing convenience and reduced frequency of use. Pfizer failed to disclose that doctors must consider various other factors, such as antibiotic resistance, in deciding what antibiotic to prescribe for AOM.

Among other matters, the Assurance requires Pfizer to make accurate disclosures for Zithromax regarding dosing convenience and frequency, effectiveness in comparison to other antibiotics, and ineffectiveness in treating viral infections.

In addition, Pfizer must fund service announcements in the amount of \$2 million during the next three cold seasons (November through March). Pfizer is paying the 19 states involved a total of \$4 million for costs and attorney's fees. Arizona's share is \$127,273.

- **In the Matter of Sears, Roebuck & Company.** In October 2002, the Office entered into an assurance of discontinuance with national retailer Sears, Roebuck & Company over allegations that the company defrauded Spanish-speaking consumers through sales of maintenance service agreements, which are contracts that are sold for service on appliances, electronics and other goods. The State had alleged that Spanish-speaking customers were given details of the service contracts verbally in Spanish, but that the contracts they were given to sign were in English.

As part of the settlement, Sears has agreed to provide Spanish-speaking consumers with copies of the agreement in Spanish, if any or all of their sales transaction was conducted in Spanish; display signs in both English and Spanish at sales counters that contracts will be available in both languages

upon request; and pay \$200,000 in civil penalties, investigate costs and fees.

- **In the Matter of DoubleClick, Inc.** Arizona and nine other states entered into an Assurance of Discontinuance with DoubleClick, Inc. over allegations that the company's practices in collecting and using data from and about Internet users violated the Consumer Fraud Act. The recovery for Arizona was \$35,000. DoubleClick (DC) is a third-party Internet ad service that derives its revenue from collecting non-personally identifiable (PII) user data it collects through cookies to record, analyze and target online ads to particular users. In most cases, when a user sees an ad on a Web site, DC is acting as an agent for that particular Web site. In other cases, Web sites contract with DC to create non-PII profiles based on DC's tracking of consumers as they move from one Web site to another over time. Under this configuration, Web sites share anonymous Web site data with DC, which in turn develops marketing scores for future ads targeting particular users across the Internet.

The states alleged that DC misrepresented the scope of its non-PII data collection across Web sites, misrepresented its ability to vouch for the privacy practices of the Web sites with which it did business, and misrepresented the types of information that it stored regarding consumers. The Assurance requires DC to abide by its representation that it does not base its ad selection services on PII about the consumer; to post online privacy policies regarding DC's services; to allow users to opt-out of DC's data gathering regimen; and to purge old data on a regular basis.

- **In the Matter of First USA Bank, NA, now known as Bank One Delaware, NA.** On January 8, 2003, Arizona and 27 other states entered into an Assurance of Discontinuance with Bank One regarding Bank One's agreements with non-affiliated third-party vendors that permitted the vendors to solicit Bank One's credit card members for various "club memberships," including automobile club memberships. The states alleged that Bank One provided

enough information to the vendors so that the vendors could place charges on the consumers' Bank One credit cards for products, services and renewals the credit card holders had not authorized.

Under the Assurance, Bank One must enter into written agreements with third-party vendors that require Bank One to approve vendors' scripts and marketing materials; to include in its vendor contracts that Bank One's credit cards members must expressly authorize charges on their credit cards and that vendors maintain a record of the authorizations; to place restrictions on vendors' use of the word "free"; and to require vendors to get the express authorization of credit card holders for membership renewals. The recovery for Arizona is \$26,041.

- **State of Arizona, ex rei. Janet Napolitano, Attorney General, and the Arizona Corporation Commission v. Safari Media, Inc.** et al. In October 2002, a Judgment was entered in favor of the State awarding restitution in the amount of \$22,277,412.45. The lawsuit was filed in June 2000 against Safari Media, Inc. and Mark and Maryanne Chisholm, the principals of the company, for violations of the Consumer Fraud, Securities, and Anti-Racketeering Acts.

Between February 1997 and June 2000, the Chisholms raised \$24 million from approximately 750 investors in Arizona and elsewhere through the offer and sale of stock in Safari Media. The Chisholms informed investors that Safari Media designed, produced, published, and marketed multi-media/CD ROM titles and provided consulting services for web design. The Chisholms provided investors with a series of forged letters and other documents purporting to come from Toshiba Corporation to make it appear that Safari Media had attracted the interest of Toshiba and that Toshiba was considering an offer to purchase Safari. The Chisholms also provided investors with an audit report claiming that the accounting firm of Pricewaterhouse Coopers LLP had audited the books and records of Safari Media and

found that Safari's financial statements fairly presented its financial position, operations and cash flow. In fact, Toshiba had no relationship with Safari and the audit report was a forgery. The company was a sham and the Chisholms converted investors' funds to support their lavish lifestyle.

At the State's request, the Court appointed a receiver. The receiver was able to identify approximately \$1.4 million in assets. The Chisholms filed for bankruptcy in the fall of 2000 and the superior court litigation was stalled for nine months. The Court of Appeals affirmed the trial court's Judgment in July 2003.

- **State v. Labor Ready, et al.** The State filed a lawsuit against Labor Ready, Inc. and Labor Ready Southwest, Inc., a Washington corporation; and Labor Ready Properties, Inc., a Nevada corporation, alleging that the corporations were violating The Check Cashers Act and the Consumer Fraud Act. The State's lawsuit alleged that Labor Ready employed thousands of temporary employees to work in construction, landscaping and other Arizona businesses. Labor Ready attracted workers with a "WORK TODAY, CA\$H TODAY" program, under which Labor Ready paid its employees in cash at the end of each work day if the employees used Labor Ready's cash dispensing machines (CDM) to cash their checks. The CDMs automatically deducted a fee of \$1.00 plus the change on the employee's check before providing the employee with cash. On December 6, 2002, Labor Ready agreed to close its CDMs in response to the State's injunction.
- **State v. R.J. Reynolds Tobacco Company.** During FY2003, the State briefed and argued in opposition to R.J. Reynolds' appeal from the trial court's judgment in which the court found that Reynolds had violated the MSA's restrictions on advertising in connection with Reynolds Brand Name Sponsorship of the NASCAR Winston Cup Series. The State also authored an Amicus Brief signed by 37 States on the same issue, which was filed in the California Court of Appeals. The California court ruled in our favor in April

2003. Both Courts eventually ruled in the States' favor.

Antitrust Unit

Multistate Cases

- **BUSPAR.** This is a multistate case against Bristol-Myers Squibb Co. (BMS), Watson Pharma, Inc. (Watson), and Danbury Pharmacal, Inc. (Danbury) for unlawfully attempting to maintain a monopoly and prevent the entry of generic competitors with respect to the drug BuSpar. BuSpar is a widely prescribed anti-anxiety drug which contains buspirone hydrochloride as its active pharmaceutical ingredient. Several states, including Arizona, sued BMS, Watson and Danbury in the U.S. District Court for the Southern District of New York.

On March 7, 2003, Arizona, along with 36 other states and commonwealths, entered into a Settlement Agreement with defendants. The terms of the agreement included injunctive relief and a monetary cash payment of \$100 million. An Order Preliminarily Approving Proposed Settlement was signed on April 2, 2003. On May 15, 2003, the States' Sixth Amended Complaint was filed, adding 19 states and territories. The Final Approval Hearing took place on November 6, 2003, and the Settlement Agreement was approved on November 14, 2003.

The Consumer Notice period has ended, as well as the deadline for the filing of any appeals to the settlement. No appeals were filed and the states are on track to file their Plan for Distribution and Petition for Supplemental Attorneys' fees no later than mid-March, 2004. After court approval of the aforementioned, the settlement can be disbursed.

- **CARDIZEM.** This is a multi-state case in which Arizona and several other states brought a case against defendants Aventis Pharmaceuticals, Inc; Carderm capital, L.P.; and Andrx Corporation on May 14, 2001, in the U.S. District Court for the Eastern District of Michigan, alleging monopolization, attempted monopolization

and agreements in restraint of trade in the market for Cardizem CD and its generic bioequivalents. The states and defendants entered into a settlement agreement for the sum of \$80 million.

The settlement was approved at the final hearing on October 1, 2003. The deadline for consumers to file their claims was extended to November 15, 2003. An objection to the Settlement Agreement is currently pending. The state plaintiffs have filed an Appeal Bond Brief and a Motion to Expedite Appeal, which are currently under consideration.

- **COMPACT DISC (MUSIC CD).** This is a multi-state lawsuit brought against record companies and large music stores which has been settled for a combined \$143 million in cash and compact discs. The lawsuit alleged that music distributors Sony Music Entertainment, Time Warner, EMI Music Distribution, Universal Music Group and Bertlesman Music Group violated federal antitrust laws by conspiring with record store chains Tower Records, Musicland Stores Corporation and Transworld Entertainment Corporation to keep prices of compact discs artificially high and punish discount chains (i.e. Target, Kmart, Wal-Mart, Best Buy and Circuit City) for selling them at lower prices.

There are three components to the settlement agreement: 1) defendants are required to refrain from violating antitrust laws in the future; 2) defendants must pay \$67,400,00 in cash to plaintiffs; and 3) defendants must provide \$75,500,000 in compact discs to the plaintiff states. Arizona filed its cy pres distribution plan with the Court on March 28, 2003. The compact discs will be distributed to libraries, universities and the National Guard. Arizona consumers should receive approximately \$1,614,226.80 (\$13.76 x 117,313 claims).

A prisoner filed an appeal. Plaintiff states have filed a Motion to Dismiss the Appeal and a Motion to Expedite the Hearing on Appeal. There has not yet been a ruling from the Appeals Court. Distribution of the

settlement and fees are on hold until the appeal has been resolved.

- **SALTON CORP.** This was a multi-state case against Salton, Inc., the manufacturer of the George Foreman Grill, for price fixing. This matter was settled for \$8 million. Defendants made their first payment into the multi-state escrow account in New York in March 2003. Their second payment is due March 2004, after which time disbursements can be made. A cy pres distribution plan is due in March 10, 2004. The distribution should benefit entities that deal with health and nutrition.
- **TAXOL.** This is a multi-state complaint against Bristol-Myers Squibb Co. (BMS). The complaint was filed on June 6, 2002, alleging that BMS monopolized a market for paclitaxel-based anti-cancer drugs and unlawfully maintained that monopoly during some or all of the period between December 1997, the expiration of BMS's Hatch Waxman marketing exclusivity for the branded drug Taxol, and IVAX's introduction of a general competitor in October 2000.

On April 21, 2003, the states entered into a Settlement Agreement accepting BMS's cash settlement offer of \$55 million. The settlement was approved at the final hearing on November 19, 2003.

The deadline for consumers filing claims has been extended to January 31, 2004. A letter was sent to all oncologists notifying them of the extension and asking for assistance in informing qualifying patients/consumers of the opportunity to file a claim.

Local Cases

- **GASOLINE - 2003.** During the March-April and August-September 2003 supply and pricing disruptions, the Antitrust Unit responded to numerous media inquiries. The Unit, with support from CIC, received and responded to approximately 1,000 inquiries by telephone, letter, and e-mail from consumers during the August-September 2003 disruption alone. The complaints were analyzed for potential

consumer fraud or antitrust violations, and for the consumers' position on a possible price gouging statute.

In May 2003, the Attorney General, by the Antitrust Unit, provided legislators with information about the gasoline market and price gouging statutes. The Unit also conducted a statewide Gasoline Retailer Survey in May 2003 to obtain a more complete understanding of the Arizona market.

On October 9, 2003, Attorney General Goddard testified before the Senate Field Hearing on Pipeline Safety and other issues, sponsored by Senator McCain.

The Unit is currently investigating gasoline supplies regarding the August-September supply and pricing disruption. The Unit issued a CID to Kinder Morgan for information on inventories and deliveries around the time of the Kinder Morgan pipeline rupture.

The Unit has conducted extensive research on price gouging laws, and will continue to work with legislators to promote this legislation.

The Antitrust Unit is continually evaluating, monitoring and reporting on the Arizona gasoline market, and collecting gasoline pricing data. On behalf of the Attorney General's Office, members of ATU are continually involved with providing pricing data and crisis response/management and inter-agency collaboration with the Governor's Gasoline Working Group. The Unit regularly provides information and analysis on the Arizona gasoline market to the Governor and other state and federal agencies. The Attorney General's Office is a member of a national working group on gasoline related issues, composed of other state Attorneys General. Finally, the Attorney General's Office, through the Antitrust Unit, participates in the Federal Trade Commission's Gasoline Price Monitoring Project.

- **EL PASO NATURAL GAS.** On March 20, 2003, the Arizona Attorney General filed a

complaint against El Paso Natural Gas in Maricopa County Superior Court seeking monetary damages, civil penalties, declaratory and injunctive relief and disgorgement of profits as a result of unlawful activities to fix, raise, stabilize and maintain prices of natural gas and capacity. The Attorney General is represented by the law firm Haralson, Miller, Pitt, Feldman & McAnally, P.L.C. El Paso was successful in its request to remand the case to federal court, and the Attorney General sought return of the case to state court. Plaintiff State of Arizona's Motion to Remand was granted on December 20, 2003. On January 8, 2004, Defendants filed an Appeal to the Order to Remand. On January 12, 2004, Defendants filed a Motion to Stay Remand Order Pending Appeal; Motion for Shortened Briefing Schedule and Expedited Consideration of Motion to Stay Remand Order Pending Appeal; and a Proposed Order Setting Briefing Schedule on Motion to Stay Remand Order Pending Appeal.

Environmental Enforcement Section

The Environmental Enforcement Section (EES) provides legal advice to a number of state agencies and boards and enforces civil laws that affect our environment. To carry out this mission, the Section is divided into three components: the Superfund Programs Unit, the Civil Unit and the Western States Project. Agencies represented include the Arizona Department of Environmental Quality (ADEQ), the Game and Fish Department and Commission, and the Department of Agriculture. In addition, a member of EES serves as the Chairperson of the Arizona Power Plant and Transmission Line Siting Committee on behalf of the Attorney General.

Superfund Programs Unit

The Water Quality Assurance Revolving Fund (WQARF) is Arizona's superfund program. The Superfund Programs Unit generally provides legal resources to ADEQ and the WQARF Advisory Board in the necessary funding and legal framework for remediating soil and groundwater contaminated by hazardous substances. The Unit also provides legal

resources to ADEQ on Department of Defense sites and Federal superfund (CERCLA) sites in Arizona. The Unit assists ADEQ by providing a broad range of legal advice and services in actions taken or contemplated against parties identified as being responsible for soil and water contamination. Additionally, the Unit provides training for ADEQ personnel.

Civil Unit

The Civil Unit prosecutes civilly, on behalf of ADEQ, those facilities that do not comply with state laws and regulations governing air and water quality, as well as waste management practices. The Civil Unit is also active in providing legal services related to permitting and planning in ADEQ's management of waste, air and water quality issues. The attorneys for the Arizona Game and Fish Department and Commission provide legal advice related to real property acquisitions, water rights, open meeting law, public records requests, and other related administrative concerns. The attorney for the Arizona Department of Agriculture provides legal services to the Department and several related boards and councils; and provides advice on a wide range of issues. The Unit also provides training for agency personnel.

Western States Project. The Western States Project, based in Phoenix, is a consortium of governmental agencies from thirteen western States and Provinces involved in administrative, civil and criminal enforcement of environmental laws. The Project's mission is to protect and enhance the environment through increasing the effectiveness of environmental enforcement efforts and coordinating enforcement activities, including information services, among member states. The Project is supported by federal grants from the U.S. Environmental Protection Agency and contributions from the Project's membership.

Major Cases

- **Estes Landfill WQARF Site.** EES assisted ADEQ in investigating the Estes Landfill and pursuing responsible parties. In 2003, this activity resulted in five financial settlements in the Estes Landfill WQARF case: Honeywell - \$1,125,000.00; Waste

Management - \$219,000.00; GAC, Inc. (formerly Goettl Air Conditioning) - \$140,000.00; Safety-Kleen - \$99,000.00; and Frazee Paints - \$90,000.00.

- **Park Euclid WQARF Site.** EES assisted ADEQ in negotiating with two responsible parties and their insurance companies at the Park Euclid WQARF Site. The negotiations resulted in the insurance carriers contributing to the remedial investigation, and remedial action at the site continuing, even though ADEQ WQARF suffered budget cutbacks.
- **Water Rights Settlement.** EES assisted the Game and Fish Department in negotiating a water rights settlement agreement with Gila River Indian Community, thus protecting Game and Fish water rights in the Gila River water shed against senior claims by the Tribe.
- **Dome Rock.** EES filed litigation on behalf of ADEQ and then assisted in negotiating a settlement in this hazardous waste case, for \$100K in penalties. The facility does not have a permit to treat, store or dispose of hazardous wastes. Dome Rock stored and accepted loads of hazardous waste, and then sent the hazardous waste to another unpermitted facility where it was burned as used oil. Dome Rock failed to comply with various reporting and tracking requirements.
- **Pro Petroleum.** EES assisted ADEQ in negotiating a settlement in this water quality case, for \$20K in penalties and a cleanup with a cost of \$1 million. On December 11, 1999, a tanker truck owned by Pro Petroleum went through a guardrail off of State Route 87 near the town of Rye resulting in 7,000 gallons of diesel fuel being spilled into a wash that flows into Hog Canyon, resulting in soil and water contamination.
- **Thermo Fluids.** EES assisted ADEQ in negotiating a settlement in this hazardous waste case, for \$22.5K in penalties. Thermo Fluids Inc. does not have a permit to deal with hazardous waste. Thermo Fluids accepted waste oil that had been contaminated with solvents.

- **Mineral Policy Center v. ADEQ.** EES successfully represented ADEQ in defending the issuance of an air quality permit to the Carlota Mining Company before the Office of the Administrative Hearings. EES defended ADEQ against claims that the Department's issuance of the permit was inconsistent with the requirements of state and federal law. The claims included several innovative arguments concerning the regulation of emissions from large off-highway vehicles, equipment and trucks, and the regulation of toxic air pollutants under Arizona's guidelines.
- **Bennett Oil Company v. ADEQ.** EES successfully represented ADEQ before the Office of Administrative Hearings in defending ADEQ's denial of claims against the State Assurance Fund. Arizona established the Fund to assist owners and operators of underground storage tanks in cleaning up environmental contamination. The appellant argued it was entitled to reimbursement from the Fund even though the cleanup costs were covered under the appellant's insurance policy. EES successfully argued that, under Arizona law, applicants to the Fund must first go to their insurance before receiving monies from the Fund. The decision affects numerous claimants and potentially millions of dollars in claims to the Fund.
- **Valley Refining, LLC.** EES assisted ADEQ in negotiating a Consent Judgment with civil penalty of \$75,180 for air quality violations from a petroleum storage facility in El Mirage.

Accomplishments

- **Camp Navajo DOD Site.** EES assisted ADEQ in drafting a letter to the Army Environmental Center (AEC) in August 2002, which criticized the Army's two-volume Draft Final Closure Plan Investigation Report for the Open Burning/Open Detonation area at Camp Navajo. The letter contained a summary of the nearly 10-year history of frustrated Army/ADEQ negotiations over an

acceptable closure plan for this former munitions dump site. The letter to the AEC analyzed the numerous technical deficiencies of the Army's Investigation Report, which had concluded that "no further action" was necessary to close the OB/OD under RCRA. ADEQ was later informed by the National Guard Bureau that the letter was instrumental in forcing the Army to abandon its "no action" position and to assure ADEQ officials that dedicated funding would be provided for the OB/OD (which may exceed \$30 million) to clear unexploded ordinance from the OB/OD and to clean close the site as required by law.

- **Ozone Standards.** EES assisted ADEQ in implementing new ozone standards developed by EPA to provide greater protection of human health and the environment. After a year of assessing the legal and technical requirements imposed by the new standards, ADEQ and the Governor proposed area designations to EPA defining the areas in Arizona that attain and do not attain the new standards. The area designations are the first formal step in implementing the new standards.
- **Regional Haze State Implementation Plan.** EES assisted ADEQ in developing a state implementation plan required under the Clean Air Act to address regional haze. Regional haze impairs visibility at some of our state's most scenic vistas, our national parks, and wilderness areas. The state implementation plan establishes measures to prevent further degradation and improve visibility in Arizona's most valuable state resources.
- **Air Quality Rules.** EES assisted ADEQ in developing and negotiating changes to its air quality rules governing the opacity of emissions from specific sources of air pollution. These rules will decrease the opacity of emissions that may legally come from these sources and improve air quality. EES also represented and assisted ADEQ in developing and negotiating rules relating to reasonably attributable visibility impairment. These rules will be utilized in determining whether best available retrofit technologies must be utilized by major

sources of air pollution found to be contributing to visibility impairment in our National Parks and Wilderness Areas.

- **Pesticide Contamination Prevention Rules Project.** EES provided advice to ADEQ and assisted in the negotiations with stakeholders resulting in a rewrite of ADEQ's rules and statutes for pesticide regulation.