



Arizona Attorney General Terry Goddard 2010 Annual Report

Arizona Attorney General's Office

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**PROTECTING
ARIZONA**

Message from Attorney General Terry Goddard



I am proud to present the Attorney General's Office 2010 Annual Report. This report shows the scope and depth of the work of this Office and its talented staff during the fiscal year July 1, 2009 through June 30, 2010.

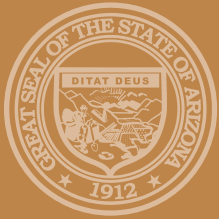
Office highlights from a very productive 2010 fiscal year included:

- A \$94 million settlement with Western Union. This historic recovery will provide substantial resources for law enforcement agencies in the four Southwest border states to combat illegal activity along the U.S.-Mexico border. The agreement also will give law enforcement ongoing data on money transactions to help disrupt the flow of funds to the Mexican drug cartels. The settlement resolved seven years of litigation over money transfers, some of which were used for criminal purposes.
- An aggressive campaign against mortgage fraud and predatory lending. With Arizona hard hit by foreclosures and loan defaults, our Office developed a multi-pronged strategy to fight predatory lending practices and scams. We worked to stop deceptive marketing of mortgages, deceptive practices of servicing loans and fraudulent "mortgage rescue" scams. We've also sought to educate homeowners about how to avoid scams and how to work with lenders to avoid foreclosure.
- A crucial agreement to protect Luke Air Force Base. Our Office played the leading role in gaining a settlement with the Maricopa County Board of Supervisors to resolve a two-year legal fight over residential encroachment near the base. The settlement greatly improved Luke's chances of being chosen as a training site for the F-35, the next generation of Air Force fighter jets.
- Ending high-interest payday loans in Arizona. Our Office worked to ensure that the State's payday loan law "sunset" as scheduled on June 30. We created an Operation Sunset Enforcement Team to make sure payday loans, with annual interest rates of 400 percent or more, were no longer marketed. We also filed a lawsuit seeking \$5 million in restitution against Quik Cash, one of the nation's largest payday

lenders, alleging deceptive business and debt collection practices.

- Effective efforts to stop deceptive advertising and marketing. Cases included a \$12 million settlement with LifeLock, Inc., of Tempe, resolving allegations that the company overstated the effectiveness of its identity theft protections, a \$175,000 settlement with a Tucson company over deceptive marketing of nutritional supplements, and a pair of deceptive advertising settlements with auto dealers.
- Dismantling two major drug-trafficking organizations. Operation Vaqueros led to the indictment of 39 people and brought down a Mexican drug-smuggling organization that moved at least 40,000 pounds of marijuana through southern Arizona. Operation Los Tusa led to 21 indictments and knocked out a violent organization that smuggled thousands of pounds of marijuana from Mexico into Pinal County.
- Several major recoveries from international drug companies, including a \$33 million deceptive marketing settlement with Pfizer, Inc.
- The highest award given by the National Association of Attorneys General. I received the Kelley-Wyman Award, the association's highest honor, this past June. The award is a clear reflection of the excellent work done by the hard-working attorneys and staff in our Office.

It is an honor to serve as your Attorney General.



PROTECTING ARIZONA

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About the Attorney General's Office

Attorney General serves as Arizona's chief legal officer.

The Attorney General oversees the Office's seven divisions: Criminal, Civil, Civil Rights, Public Advocacy, Child and Family Protection, Solicitor General and Finance.

Attorney General Terry Goddard's management team is led by Chief of Staff Terry Fenzl and Chief Deputy Tim Nelson, who returned to the Attorney General's Office near the start of the fiscal year after having served as General Counsel to former Governor Janet Napolitano.

The Office handles a variety of criminal cases that involve organized crime, complex financial frauds, drugs, human smuggling, identity theft, public corruption, money laundering, illegal enterprises, computer crimes and criminal appeals.

The Attorney General's criminal jurisdiction for the most part is limited to complex crimes that have statewide significance, while the State's 15 County Attorneys have primary jurisdiction to prosecute violent crimes. However, the Attorney General's Office handles all felony appeals, even if the crime was prosecuted by one of the County Attorneys.

On the civil side, the Office provides comprehensive legal services for its many clients across state government. For example, the Office is committed by statute to representing more than 150 state agencies, boards and commissions.

The Office also enforces a wide variety of civil statutes, including Arizona's Consumer Fraud Act, Antitrust Act, Open



Attorney General Terry Goddard with Chief Deputy Tim Nelson (left) and Chief of Staff Terry Fenzl (right).

Meeting Law and Civil Rights Laws. Additionally, the Office acts in conjunction with its agency clients to pursue violations of various laws and regulations, including those affecting child welfare, the environment, state elections and professional licensing. The

Office also brings actions to collect taxes and debts owed to the State.

Finally, the Office defends the State, its employees, and its agencies when they are sued for damages.

During this challenging economic time, the Office has maximized operational efficiency and cost-effectiveness, while bearing in mind our statutory, ethical and professional duty to represent the State and protect its people as effectively as possible.

Historic settlement with Western Union

After seven years of legal battles with Western Union over its money transfers, some of which were used to facilitate human-smuggling and other illegal activity, a \$94 million settlement was reached in February. The ground-breaking agreement provides a \$50 million fund for law enforcement agencies in Arizona, California, New Mexico and Texas to combat illegal activity along the U.S.-Mexico border.

The agreement also will give law enforcement ongoing data on money transactions, which will help disrupt the flow of funds to the drug cartels. Intercepting the illicit transfer of money to the cartels is a key strategy to weaken the Mexico-based cartels, which control most drug-smuggling and illegal immigration into the United States. Western Union is



Key players in gaining the Western Union settlement included, from left, Assistant AG Alex Mahon, Chief Deputy Tim Nelson, Financial Remedies Section Chief Steve Lepley, Attorney General Terry Goddard, Senior Litigator Cameron Holmes, Criminal Division Chief Don Conrad and Paralegal Carol Keppler. Goddard is holding the "Outstanding Financial Investigative Effort Award."

the largest provider of money transfers in the nation.

In June, grant applications were sent to law enforcement agencies in the four southwest border states to help pay for new initiatives that will increase border security. The settlement specifically set up a \$50 million fund for these projects. Money from the agreement will also finance the new Border Crime Prosecution Team of the Arizona Attorney General's Office. Based in Tucson, the unit will be made

up of 10-12 prosecutors and investigators. It will work with the U.S. Department of Homeland Security, using state-of-the-art intelligence to fight border crimes.

Arizona's pioneering work in tracking and disrupting money transfers was highlighted in a report by the U.S. Government Accountability Office (GAO). The report commends the investigative tools developed by the Arizona Attorney General's Office and recommends them as a model for

stronger federal efforts to reduce the flow of cash to the cartels and fight human smuggling.

The Arizona Financial Crimes Task Force received the "Outstanding Financial Investigative Effort Award" on April 8, 2010 from the federal Office of National Drug Control Policy and High Intensity Drug Trafficking Area program for its efforts leading to the \$94 million settlement.

The Task Force is a cooperative organization made up of the

Arizona Attorney General's Office, Phoenix Police Department, Arizona Department of Public Safety and U.S. Department of Homeland Security. This prestigious award honors exceptional collaborations of law enforcement agencies working to combat organized crime nationally and internationally.

A Major Assault On Mortgage Fraud

Our Office developed a multi-part strategy to fight predatory lending practices and scams that have hurt homeowners. With Arizona among the states hardest hit by the mortgage meltdown, we worked to stop predatory lending, deceptive practices in servicing loans and fraudulent "mortgage rescue" scams.

Enforcement actions included three dozen investigations, 12 cases referred for possible



Attorney General Goddard speaks at conclusion of a mortgage fraud meeting in Phoenix. Behind him are U.S. Attorney Dennis Burke and U.S. Attorney General Eric Holder.

criminal prosecution, a half-dozen lawsuits, warning letters sent to 55 mortgage-related companies, and settlements that produced millions of dollars in restitution and civil penalties. They included a \$540,000 settlement with Taken Care of Investments of Tempe, which was accused of defrauding some 270 Arizonans, and a \$580,000 settlement with Hope for Homeowners Now, based in

Glendale, which charged homeowners a \$3,195 upfront fee and made fraudulent claims of a high success rate in modifying mortgages.

In addition, our Office has been examining the lending practices of several national financial institutions to determine whether their origination or servicing practices violated the Arizona Consumer Fraud Act.

At a March meeting in Phoenix, Attorney General Goddard and U.S. Attorney General Eric Holder pledged an intensified fight to prevent, prosecute and punish mortgage fraud in Arizona. Holder said Arizona would receive an additional \$1.7 million in federal funding to support the effort. The Office also joined with the U.S. Federal Trade Commission, U.S. Department of Justice and 18 other states in “Operation Loan Lies,” a nationwide crackdown against deceptive mortgage practices.

The Office stepped up its outreach efforts to educate borrowers about how to avoid scams and how to work with lenders to avoid foreclosure. Using funds from a consumer fraud settlement, the Office gave a total of \$1.3 million to 12 nonprofit housing counseling organizations in Arizona. The money will pay for the

hiring of counselors and staff to provide free assistance to homeowners at risk of losing their homes.

The Office also organized community forums that offered information about fraudulent mortgage operators. The Attorney General took part in a Univision call-in program to reach the Hispanic community, and a record number of 858 calls were received. Outreach efforts also included live webcasts to reach distressed homeowners in rural parts of the State.

Agreement Bolsters Luke's Bid for F-35

After a two-year legal fight against residential encroachment near Luke Air Force Base, the Attorney General's Office put together an out-of-court agreement with Maricopa County to resolve the dispute. The settlement significantly increased Luke's chances of being selected as a training site for the F-35, the next generation of Air Force fighter jets. Luke contributes more than \$2 billion a year to the Arizona economy.



F-16s fly over Luke Air Force Base. An agreement to ensure adequate buffer zones around the base was brokered by the Attorney General's Office.

Office Highlights (continued)

The Luke controversy goes back to 2004 when the Arizona Legislature passed a law to ensure adequate buffer zones around the State's military bases. All local governments in Maricopa County followed the law except the county itself, which continued to issue residential building permits in areas with high accident and noise potential surrounding Luke.

When the county refused to comply with the new law, our Office filed a lawsuit to stop the encroachment. The court ruled in the State's favor on nearly every point in the suit, which helped bring about the settlement.

Goddard, who has been a leading advocate for maintaining Luke's premier status for Air Force pilot training, hailed the agreement as "a major victory for the citizens of Arizona. It upholds state law, protects the



High-interest payday loans are no longer legal in Arizona after the law "sunset" on June 30, 2010.

health and safety of nearby residents and strengthens Luke's bid for the F-35. It shows what can be accomplished when a commitment to serve the greater good prevails over political and policy differences."

Costly Payday Loans Ride into the Sunset

Despite strong lobbying efforts to extend the state law allowing high-interest payday loans, the Office worked hard at the Legislature to make sure the law "sunset" as scheduled on June 30. The Consumer Protection Division then set up the Operation Sunset Enforcement

Team to monitor compliance and make sure payday loans were no longer marketed in Arizona. Consumers were urged to report any violations to the Office.

The loans, with annual percentage rates of 400 percent or more, became legal in Arizona in 2000. Voters overwhelming rejected a ballot initiative in 2008 to extend the payday loan exception to the legal interest rate maximums beyond 2010, but the industry lobbied the legislative for a bill that would override the will of the voters.

Our Office opposed that effort, and Arizona joined the growing list of states outlawing this form of high-interest lending.

Six months earlier, the Office filed a lawsuit seeking \$5 million in restitution against Quik Cash, one of the nation's largest payday lenders with nearly 600 stores across the country, alleging a pattern of deceptive business and debt collection practices. The suit accused the company of engaging in deceptive litigation tactics by suing consumers in courts distant from where they

lived, enabling the company to obtain a large number of default judgments. Goddard said the practice "made a mockery of Arizona's Justice Court system."

Taking Action to Stop Deceptive Advertising

One of the Office's priorities continues to be standing up for consumers by coming down on companies that use deceptive advertising and marketing tactics. Cases this year included:

- A \$12 million, multi-state settlement with LifeLock, Inc., of Tempe, resolving allegations that the company overstated the effectiveness of its identity theft protections. The agreement was reached with 35 states and the Federal Trade Commission. LifeLock was accused of making a number of deceptive advertising claims that encouraged customers to

Office Highlights (continued)

believe that its \$10-a-month service was a “proven solution” that would protect against all forms of identity theft, which was not true. LifeLock agreed to pay \$11 million in restitution to consumers and \$1 million to cover the costs of the states’ investigation.

- A \$175,000 settlement with Amir & Sanchez Nutraceuticals of Tucson over deceptive marketing of various nutritional supplements. The company used the Internet to advertise “14-day risk-free” trial offers of various supplements, purportedly for only a nominal cost for shipping and handling. But the offers did not adequately disclose material terms and conditions that rendered the trial offers far from “risk-free” and led to significant, unauthorized charges to consumers. The

company also falsely informed consumers they could cancel by simply calling a toll-free phone number, when in fact consumers often could not get through to a representative or were disconnected.

- A \$100,000 settlement was reached with Avondale Automotive over deceptive advertising and sales practices. The company was accused of failing to sell specific vehicles at advertised prices, advertising vehicles that were not available for sale, and using the Manufacturer’s Suggested Retail Price (MSRP) as a reference price for used vehicles. Violations were alleged from 2005 to 2009.
- A \$95,000 settlement was reached with Steve Coury dealerships in Cottonwood and Camp Verde over deceptive



Attorney General Goddard announces Operation Vaqueros, which dismantled a Mexican drug-smuggling organization, at a Tucson press conference.

advertising. More specifically, the dealerships were accused of using contradictory and confusing disclaimers in footnotes buried at the bottom of advertisements, using misleading headlines that applied to only one vehicle and falsely claiming guaranteed credit approval in advertisements. Violations were alleged from 2006 to 2008.

Pair of Drug-Trafficking Organizations Dismantled

The Office stepped up the fight against border crime and played a key role in breaking up two major drug-smuggling organizations. In both cases, our Office partnered with federal, state and local law enforcement agencies.

- Operation Vaqueros, a 36-month investigation brought down a Mexican

drug-smuggling organization that moved at least 40,000 pounds of marijuana through southern Arizona, primarily in Cochise County. Thirty-nine people were indicted. The organization used advanced counter-surveillance equipment and ramp trucks to overcome fences and other border barriers. The name “Vaqueros” refers to the cowboy attire worn by members of the group.



Bundles of marijuana and weapons seized in Operation Los Tusa are displayed at a press conference where Attorney General Goddard announces the takedown of a violent drug-smuggling organization.

One of those indicted was an employee of the Cochise County Attorney's Office, who was accused of providing confidential information to one of the drug traffickers.

- Operation Los Tusa, a 10-month investigation, knocked out a violent organization believed to have smuggled thousands

of pounds of marijuana a year from Mexico into Pinal County for at least three years. Twenty-one people were indicted. The marijuana was distributed from Pinal County stash houses to cities across the nation. The organization used both vehicles and

individual walkers who carried backpacks filled with 50 to 100 pounds of marijuana. Among those arrested was the man believed to be the organization's leader, Robert Hernandez, 38, of Arizona City. The case also resulted in the seizure of \$418,000 in cash and 21 vehicles.

High-Dollar Settlements With Drug Companies

Large, multi-state recoveries from international drug companies included:

- A \$33 million settlement with Pfizer, Inc., regarding the company's improper marketing of Geodon, an antipsychotic drug. Pfizer was

accused of deceptive practices when it promoted Geodon for "off-label" uses not approved by the U.S. Food and Drug Administration. Pfizer agreed to change how it markets the drug and not promote any unapproved uses. Although physicians may prescribe drugs for off-label uses, federal law prohibits pharmaceutical companies from actively promoting their products for any off-label use. Geodon is the brand name for the prescription drug ziprasidone.

- A \$22.5 million settlement with Abbott Laboratories, Fournier Industrie et Sante, and Laboratories Fournier over their efforts to block generic competition for TriCor, a drug used to reduce high levels of triglycerides and cholesterol. The companies were accused of



High-dollar settlements were reached with several leading drug companies.

thwarting competition by making clinically insignificant changes in the dosage and form of TriCor in order to maintain patents, engaging in sham litigation over patents they knew were invalid, and manipulating drug codes needed to facilitate generic substitution. As a result, pharmacists were not able to dispense less costly generic versions of TriCor.

- A \$5.4 million settlement with Merck & Co., Schering-Plough Corp. and MSP Singapore Co., over the companies' long delay in releasing negative results from a clinical trial for Vytorin, a cholesterol-lowering drug. In the study, Vytorin, a combination of the drugs Zetia and Simvastatin, was no more effective reducing the formation of plaque in carotid arteries than Simvastatin, a

cheaper, generically available drug. Although the clinical trial ended in May 2006, a partial reporting of negative results did not come until January 2008, and complete results were not published until the following April. Prior to the study's release, Vytorin had been heavily promoted in direct-to-consumer advertisements.

- The Office continued to obtain significant settlements in the Average Wholesale Price (AWP) lawsuit filed in 2005 against 42 drug companies. The suit alleged deceptive trade practices, including manipulation of prices of prescription drugs, causing buyers to overpay. Settlements were reached in the 2010 fiscal year with Bristol Meyers Squibb for \$900,000

and with Dey, Inc., and related companies for \$250,000. Litigation against several other defendants in the suit is ongoing.

Goddard Receives Top NAAG Award

The National Association of Attorneys General (NAAG) presented Attorney General Goddard with its highest honor, the Kelley-Wyman Award, at its

annual summer meeting.

The award is given to the Attorney General who has done the most to advance the organization's objectives.

Goddard was chosen in recognition of his work in putting together the Western Union settlement and his leadership on several law enforcement initiatives, including mortgage fraud and fighting border crime.



Terry Goddard receives the Kelley-Wyman Award from Jon Bruning (right), Attorney General of Nebraska and President of the National Association of Attorneys General.

“This award is a welcome pat-on-the-back for the hard-working men and women of the Arizona Attorney General’s Office and our law enforcement partners,” Goddard said. Paul Charlton, former U.S. Attorney for Arizona, was among many law enforcement figures who congratulated Goddard.

“AG Goddard very much deserves this prestigious award,” Charlton said. “Terry has taken on the drug cartels, human smugglers and border crime in effective and creative ways. He is a thoughtful prosecutor whose good work has now been recognized nationally by his peers.”

Working Hard to Cope With Large Staff Cuts

Like many state agencies, the Attorney General’s Office has been severely affected by the recession and state budget deficit. On two occasions, budget cuts imposed by the legislature forced staff reductions. In addition, when employees have retired or otherwise departed, their vacant positions often have not been filled to save dollars.

The combined impact on the Office has been a decrease of almost 25 percent in the number of employees since I took office in 2003. Going back nine years to FY2001, the Office has lost 32 percent, or nearly one-third, of its fulltime positions.

At the same time, the workload in many parts of the Office has increased as a result of the growth of fraud and other crimes spawned by the economic downturn. These layoffs have been painful for our Office, but the hard-working lawyers and staff continue to do all they can to maintain their high quality of work while coping with workforce reductions.

Producing Money for the

State. The Attorney General's Office provides value to the State and citizens in many ways that are hard to measure financially – from breaking up criminal organizations to stopping deceptive business practices to protecting children from abuse.

But each year the Office generates hundreds of millions of dollars in recoveries for the State and the public. For fiscal 2010, the total came to more than \$170 million. The largest categories of money generated are listed on the right.

The Office also has an excellent track record defending against high-dollar claims in liability lawsuits. Claims against the state last year totaled more than \$1.87 billion, while only \$4.68 million (less than one-quarter of 1 percent) was paid to settle or discharge such claims.

Examples of how the Attorney General's Office generated over \$170 million for the State and the Public in 2010:

\$105.4 million from the diligent enforcement of the tobacco master settlement agreement

\$21 million from the settlement with Western Union

\$13 million in restitution for Arizona victims from complex financial and high technology crimes

\$12.4 million in delinquent receivables collected on behalf of State agencies

\$9.9 million in penalties from drug, money laundering, and other trafficking and racketeering enterprises

\$3.9 million in penalties and costs from antitrust and consumer litigation

\$1.7 million for environmental protection removal actions and penalties

\$1.14 million in penalties and costs for state boards

\$1.1 million recovered for Arizona consumers in response to complaints

\$0.8 million for victim relief and civil rights training and monitoring

\$0.8 million for equal employment opportunity and fair housing enforcement



Chief Counsel Don Conrad

Mission:

To protect the citizens of Arizona by successfully investigating and aggressively and fairly prosecuting criminal cases within the State of Arizona. To promote and facilitate safety, justice, healing and restitution for all of Arizona's crime victims. To continue to effectively represent the State in capital and noncapital appeals filed by convicted felons.

Division Summary

The Criminal Division is made up of Capital Litigation, Criminal Appeals, Criminal Prosecutions, Financial Remedies, Special Investigations and Victim Services.

Criminal Prosecutions Section

The Criminal Prosecutions Section consists of four units:

The **Fraud Unit** charged 519 criminal defendants with felony offenses including fraudulent schemes and artifices, illegal enterprise, participating in criminal syndicates, money laundering and numerous violent crimes. The cases of fraudulent schemes involved losses to victims in the millions of dollars. The unit assisted nearly 30,000 victims and obtained restitution in excess of \$13,441,000. The Fraud Unit handled 43 foreign prosecutions, including many extraditions and prosecutions of Mexican citizens being tried in

Mexico for offenses committed in Arizona.

The **Drug and Violent Crimes Unit**

charged 621 criminal defendants. The Phoenix Drug Unit was involved in six wiretap investigations which resulted in three indictments charging 63 defendants. The Tucson Drug Unit was involved in one wiretap investigation. The Drug Unit also prosecuted cases involving the manufacture of methamphetamine in clandestine laboratories. A number of these involved the presence of children, resulting in the filing of child abuse charges against the meth manufacturers. During this year, the Office opened cases involving 10 children endangered by meth manufacture.



Attorney General Terry Goddard is pictured with the FBI Phoenix Division's Squad C-4 after they were presented with the Distinguished Service Award for Service Coordination.

The **Medicare Fraud Control Unit**

received 128 allegations/complaints regarding fraud, misuse of funds and patient abuse in the Arizona Health-care Cost Containment System (AHCCCS) program. Of these, a total of 108 fraud, 12 misuse of funds, and eight abuse/neglect cases were investigated by the unit in conjunction with the Arizona Department of Health Services, Arizona Adult Protective Services, the AHCCCS Administration, local police

departments and the Attorney General's Elder Abuse Project. Following preliminary investigation, 96 new cases were opened for full investigation. They included 84 fraud cases and 12 patient abuse/financial exploitation cases. The Medicaid Fraud Control Unit recovered \$1,298,253 for AHCCCS and \$358,090 in restitution for victims.

The Criminal Prosecutions Section is also responsible for handling probation violation cases

Criminal Division *(continued)*

throughout the year. This fiscal year the section prosecuted 89 defendants who had violated their terms of probation.

Criminal Appeals/Capital Litigation Section

The section works to uphold the convictions and sentences of criminal defendants in Arizona. The section filed 781 briefs, habeas answers, petitions for review, and responses to petitions for review, in addition to other substantive pleadings. Members of the section also provided education and training on a variety of criminal law and procedure issues to prosecutors throughout the state. The section also successfully litigated in state and federal courts on the question of whether Arizona's lethal injection protocol is constitutional. Arizona has several death-row inmates whose convictions and sentences are now

final and who are awaiting final resolution of that issue.

The Section provides unique benefits to the State. By representing the State in all non-capital felony appeals, the Section maintains consistent and uniform positions regarding issues of criminal law, which allows for the orderly and consistent development of criminal law in the state and federal courts.

The Capital Litigation Section handles all appellate and post-conviction proceedings involving the 133 death-row inmates in Arizona.

Financial Remedies Section

The section enforces Arizona's civil racketeering remedies to combat the effects of organized criminal conduct on legitimate

commerce. FRS focuses primarily on money laundering in drug and fraud cases. FRS supports statewide efforts to deprive racketeers of the profits that keep them operating. During this fiscal year FRS seized approximately \$8,212,861 in racketeering proceeds. Attorneys in FRS also advise and provide training to law enforcement statewide in the areas of forfeiture, money laundering and racketeering.

Special Investigations Section

The section provides investigative support to prosecutors across the Attorney General's Office as well as to law enforcement agencies throughout the State. SIS opened 297 investigations in the last fiscal year. SIS employs Special Agents who are state-certified peace officers as well as forensic auditors and

analysts. During the last fiscal year, SIS provided 1,943 assists in specialized areas of expertise to law enforcement agencies throughout Arizona.

Office of Victim Services

The office provides services to victims of fraud, identity theft and other crimes. Advocates provided services to more than

7,631 victims last year. The Victims' Rights Ombudsman received and investigated 283 complaints of violations of rights and audited 14 agencies. We supported 60 criminal justice agencies with grants from the Victims' Rights Program totaling \$2,689,000 and provided 55 trainings in victims' rights programs to more than 1,460 professionals statewide.



Attorney General Terry Goddard presents the Honorable Judge Roland Steinle with the Distinguished Service Award for Innovative Practices during the 2010 Attorney General's Crime Victims' Rights Week Celebration.

The office continues to serve as a leader statewide on victims' issues. Activities included the Victims' Rights Week program which included the Attorney General presenting his Distinguished Service Awards to six outstanding professionals and agencies in the criminal justice field.



Attorney General Goddard presents Bobbi Sudberry with the Public Policy Distinguished Service Award for her work as a volunteer with the Arizona Coalition Against Domestic Violence and her work with "Kaitly's Law".

Major Cases

Criminal Appeals/Capital Litigation Section

Doody v. Schriro

In 1991, Doody, then 17, and a 16-year-old friend robbed a Buddhist Temple west of Phoenix. Doody shot and killed seven Buddhist monks, a nun, and an older boy who worked at the

Temple during the robbery. Doody was subsequently questioned by the police for about 13 hours and made some statements that tended to incriminate him (though he denied any participation in the murders). Doody was convicted and sentenced to nine consecutive life sentences. Following direct appeal, Doody filed a petition for writ of habeas corpus in federal district court that was denied. He then appealed to the Ninth Circuit.

In November 2008, a three-judge panel of the Ninth Circuit held that Doody was entitled to a new trial because the Arizona Court of Appeals' holding that Doody's statements were voluntary was an unreasonable application of Supreme Court case law. In December, the section filed a petition for rehearing *en banc*, asserting that the panel failed to give adequate deference to the state court's legal



Attorney General Goddard recognizes Northland Family Help Center in Flagstaff for its service to victims of domestic violence and honors the 10-year anniversary of Haven for Advocacy and Learning Opportunities (H.A.L.O.) House Domestic Violence Shelter. With Goddard are, from left: Sonja Burkhalter, Northland Family Help Center Executive Director, Erin Callinan, Women's Shelter Manager, and Dan Levey, Attorney General's Office Victim Services Director.

conclusion, particularly in light of the fact that it upheld Doody's waiver of his *Miranda* rights.

In May 2009, the Ninth Circuit granted rehearing and the case was argued to an 11-judge panel in June 2009. On February 25, 2010, a majority of the panel, over a spirited three-judge dissent, held that Doody was entitled to a new trial. On May 25, 2010, the section filed

a petition for writ of certiorari with the United States Supreme Court. The petition is currently pending and the Supreme Court will decide whether to take the case in October.

State v. Landrigan

On December 15, 1989, Chester Dean Dyer was found dead in his apartment by a co-worker who went to Dyer's residence after he failed to show up at work. Dyer died by strangula-



Todd Lawson, centered, received an award of appreciation from the U.S. Department of Education Office of Inspector General in recognition of his prosecution of their cases involving the use of stolen identities to obtain student loans. With Lawson are Jon Greenblatt and Natalie Forbort, from the Inspector General's Office.

tion and he was found with an electrical cord at the front of his throat. He also had lacerations about his face and puncture wounds in his back. Dyer had telephoned a friend at work two days earlier to tell him he had talked someone named Jeff into coming to his apartment to have sexual relations. On December 20, 1989, police arrested Jeffrey Landrigan on unrelated

charges. He was wearing a shirt that belonged to the victim. Landrigan's fingerprints were at the crime scene and blood on his shoe matched blood from the victim's shirt.

Landrigan's appellate and post-conviction arguments were rejected in state and federal courts during an 18-year appeal

process. He subsequently challenged Arizona's lethal injection protocol in a petition for post-conviction relief filed after the U.S. Supreme Court addressed the constitutionality of Kentucky's lethal injection protocol in *Baze v. Rees*. The Maricopa County Superior Court upheld Arizona's protocol, and in 2010 the Arizona Supreme Court denied Landrigan's petition for review from that decision. The State's request for an execution warrant will be addressed by the Arizona Supreme Court in September.

State v. Cook

Daniel Cook, John Matzke, and Carlos Cruz-Ramos worked at a restaurant in Lake Havasu City and shared an apartment. On July 19, 1987, Cook stole money from Cruz-Ramos. When Cruz-Ramos began searching the apartment for the money, Cook and Matzke tied him to a

chair and began beating him with their fists and a metal pipe. Cook also cut Cruz-Ramos with a knife, sodomized him and burned his genitals with cigarettes. After several hours of torture, Matzke and Cook crushed Cruz-Ramos' throat with the pipe.

When Kevin Swaney, another co-worker, arrived at the apartment, Cook forced him upstairs and showed him Cruz-Ramos' body. Cook and Matzke then tied Swaney to a chair. Matzke slept while Cook sodomized Swaney. When Cook was

finished, he woke Matzke and the two men strangled Swaney with a bed sheet. Matzke plead guilty to second-degree murder and testified against Cook.

Like Landrigan, following the denial of state and federal appeals, Cook challenged the constitutionality of Arizona's lethal injection protocol in a post-conviction proceeding in Mohave County. The Mohave County Superior Court rejected Cook's claim, and the Arizona Supreme Court will address his petition for review in September 2010.



AG Goddard announces the Western Union settlement at a Phoenix press conference.

Criminal Division *(continued)*



Money and guns were found in a home in Manlius, NY, as a result of a search warrant executed in cooperation between the Arizona Attorney General's office and Manlius Police Department for a fraud investigation. Defendants Gordon and Majda Deibler were charged with fraud schemes, insurance fraud and theft. They had fled to New York and attempted to hide assets. Both Gordon Deibler and his wife pleaded guilty to felonies. Gordon Deibler was sentenced to five years in prison and ordered to pay more than \$1 million in restitution. Majda Deibler was placed on probation.

Bible v. Ryan

Richard Bible was sentenced to death for the kidnapping, molestation and murder of a 9-year-old girl in Flagstaff in 1988. After 17 years of litigation of Bible's claims in state and federal court, the Ninth Circuit affirmed the district court's denial of Bible's habeas corpus petition. The U.S. Supreme Court denied Bible's petition for certiorari. We requested a war-

rant of execution in the Arizona Supreme Court based on Bible's exhaustion of his appeals. The Court continued the motion based on Bible's last-minute request for DNA testing.

State v. Donald Edward Beaty

On May 9, 1984, 13-year-old Christy Ann Fornoff disappeared while collecting for her *Phoenix Gazette* newspaper route at the Rock Point Apartments in

Tempe. Two days later, Donald Edward Beaty, the resident maintenance manager for the complex, was arrested. On June 20, 1985, jurors convicted him of first-degree murder and sexual assault. Judge Rufus C. Coulter, Jr. sentenced Beaty to death. The Arizona Supreme Court affirmed his convictions and death sentence.

His case was litigated for the next two decades in the state and federal courts during which time the trial judge died and the victim's parents aged waiting for finality. In 2009, for the third time, the U.S. Supreme Court refused to review Beaty's case. After DNA testing, the State requested a warrant of execution. The Arizona Supreme Court denied the request after Beaty responded that he would be

filing his eighth post-conviction relief petition challenging Arizona's lethal injection protocol. (With other death row inmates, Beaty had also challenged the protocol in federal court. That civil case is pending before the Ninth Circuit.) In March 2010, the trial court dismissed Beaty's eighth petition for post-conviction relief. Beaty has asked the Arizona Supreme Court to review that decision.

State v. Eric John King

On December 27, 1989, shortly after midnight, Eric John King, recently released from prison, robbed a U-Totem convenience market at 48th Street and Broadway in Phoenix. He killed both Ron Barman, the store manager, and Richard Butts, the security guard. The robbery and murder of Ron Barman was captured on two video cameras. Jurors convicted him of two

counts of first-degree premeditated murder. Judge Michael D. Ryan, now on the Arizona Supreme Court, sentenced King to death for each of the murders. The Arizona Supreme Court affirmed his convictions and death sentences.

For the next decade and half, the King case was appealed through the state and federal courts. Finally in March 2009, the U.S. Supreme Court declined to hear the case for the second time. When the State moved for Warrant of Execution shortly afterwards, King responded that he would file a post-conviction relief petition challenging Arizona's lethal injection protocol. The trial court dismissed King's petition in March 2010. King recently asked the Arizona Supreme Court to review that decision.

State v. Cayeros

Johnny Daniel Cayeros was a gang leader in the Grant Park neighborhood of South Phoenix. In March 2001, he shot John Flores multiple times with a shotgun. In addition to killing Flores, he injured two other people, Ray Osuna and Mark Barehand. The State was unable to take the case to trial until an additional eyewitness came forward five years ago and placed the shotgun in Cayeros' hands. The Court of Appeals has not decided his appeal.

Spears v. Ryan

In 1991, Anthony Spears came to Arizona to visit Jeanette Beaulieu, who considered herself Spears' girlfriend (although Spears was actually living with a woman in San Diego). Spears returned to California with items that belonged to Jeanette and was driving her truck. Jeanette's

body was found in the desert; nearby was a shell casing identified as having been fired from Spears' gun. He was convicted of murder and sentenced to death. Spears raised 17 claims in his federal habeas petition. On September 14, 2009, the district court denied Spears' requests for evidentiary development, denied all of his claims, and dismissed the habeas petition. The case is currently pending in the Ninth Circuit.

Poyson v. Ryan

On January 20, 2010, District Court Judge Neil Wake denied Robert Allen Poyson's federal habeas corpus petition. Poyson received three death sentences in connection with the brutal killings of Leta Kagen, Robert Delahunt, and Roland Wear in 1996 in Mohave County. Poyson's appeal is currently pending before the Ninth Circuit Court of Appeals.

State v. Guillen

The case involved a canine sniff conducted on the exterior of Jose Guillen's residence which uncovered the presence of marijuana. The police searched the residence after getting the consent of his wife. The case presented an issue of first impression in Arizona, whether the state right to privacy in the circumstances of this case afforded greater protections than the Fourth Amendment to the U.S. Constitution. Ultimately the State won the case because the court found the wife's consent to have been valid.

State v. Far West Water & Sewer, Inc.

The Arizona Court of Appeals affirmed the convictions and sentences of Far West Water and Sewer, Inc., an Arizona Corporation, for negligent homicide,

aggravated assault, two counts of endangerment, and violating a safety standard or regulation that caused the death of an employee. The convictions arose out of an incident at a sewage collection and treatment facility owned and operated by Far West in which two people died and a third suffered serious injuries after being overcome by hydrogen sulfide gas. The court also affirmed the convictions of Brent Weidman, the president and chief executive officer of Far West, on two counts of negligent homicide and two counts of endangerment arising out of the same incident.

State v. Soliz

Article 2, Section 23 of the Arizona Constitution requires that "juries in criminal cases in which a sentence of imprisonment for 30 years or more is authorized by law shall consist of 12 persons." Given the com-

plexity of Arizona's sentencing scheme, trial courts are sometimes not aware that a particular defendant is potentially subject to a sentence of 30 years or more. For over 25 years, our Supreme Court consistently ruled that the failure to empanel a 12-person jury when a sentence of 30 years was theoretically possible was reversible error, even if the defendant did not object in the trial court and even if the defendant received a sentence substantially less than 30 years. Under this rule, criminal defendants had no incentive to request 12-person juries because they were assured an automatic trial on appeal.

In *State v. Soliz*, the section was able to convince the Arizona Supreme Court that, if the parties allow the case to proceed with less than 12 jurors, a sentence of 30 or more years may not be

imposed. This rule protects the defendant's constitutional rights, while at the same time ensuring that defendants do not engage in game-playing at the expense of the Arizona taxpayers. Because this had been a recurring issue with a half-dozen or so automatic reversals a year, the ruling will result in substantial savings to Arizona.

Major Cases

Criminal Prosecutions Section

Fraud Unit

State v. John Farinas

The unit obtained a jury conviction on May 6, 2010 in *State v. John Farinas*, on charges of assisting a criminal syndicate and conspiracy to commit promoting prison contraband. The defendant was a member of the New Mexican Mafia, a danger-

ous criminal street gang. In return for payment, he received contraband in the Maricopa County Jail from Jason Keller, a former attorney. The defendant was sentenced by Judge Sam Myers on June 4, 2010, to 18 years in prison.

State v. Robert Reed

The unit obtained a 10-year prison sentence on October 13, 2009, against Robert Reed, who was convicted *in absentia* with a jury verdict in January 2009 on charges of arson of an occupied structure, fraudulent insurance claim and endangerment. Reed set fire to his townhouse on April 28, 2007, at a time when 12 people (including six children) were sleeping in two other town homes attached to Reed's. He was recently arrested in Yavapai County and returned to Maricopa on the bench warrant.

State v. William Veach

The unit obtained a manslaughter guilty plea from William Veach arising out of the death of Cassandra Castens, a 17-month old daughter of the defendant's girlfriend. Veach was then serving with the United States Marines. This case was investigated as a "cold case" by the Naval Criminal Investigation Section (NCIS) of the U.S. Navy. Prosecution had been previously declined by a county attorney's office, and NCIS brought the case to the AGO, which accepted the difficult challenge of prosecuting a decade-old murder case. The defendant was sentenced on November 13, 2009, to 10 years in prison.

State v. Charles Ferguson

The unit obtained a five-year prison sentence, followed by seven years probation, against Charles Bruce Ferguson. Fer-

guson, who was also ordered to pay \$3,105,000 in restitution, arising out of his elaborate investment schemes that defrauded at least 42 people. The defendant pleaded guilty to two counts of theft. The defendant solicited seven individuals to invest amounts ranging from \$5,000 to \$50,000 in a project to purchase a Mesa apartment complex and convert it into condominium units which he said would then be sold, but which never occurred. To cover it up, Ferguson made numerous verbal and written misrepresentations to investors, including falsifying documents purported to be from Washington Mutual Bank and the City of Mesa. Victims did not receive any of the promised returns, and most lost their principal investment as well. Ferguson was not licensed to sell securities.

State v. Douglas Ross Zuber

The unit obtained a six-year prison sentence on January 12, 2010, against Douglas Ross Zuber, followed by seven years of probation, after his guilty plea. Zuber was also ordered to pay \$6,196,985 in restitution to Harvard Investments, Inc., in Scottsdale. Between 1999 and 2006, Zuber embezzled approximately \$11 million from Harvard Investments, Inc., where he was employed as an executive vice president, directing the company's investments in real estate. At the time Zuber's theft was uncovered, his lifestyle included a multi-million-dollar Paradise Valley home; a Los Angeles condo; several luxury automobiles, along with jewelry, art and other collectibles. Along with numerous documents found when the scheme collapsed, investigators discovered a draft of a book Zuber was writing, titled "Deeds



Attorney General Goddard testifies at a congressional hearing in Washington, D.C., on Arizona's efforts to intercept illegal money transfers to the Mexican cartels and reduce human-trafficking and drug-smuggling.

of Trust", which described how to embezzle from your employer.

Drug Unit

State v. Terri Schade

The unit obtained a jury conviction against Terri Schade on September 3, 2009, on the charge of possession of chemicals and equipment to manufacture methamphetamine. The case was investigated by the Meth Lab Task Force. The

defendant was sentenced on October 7, 2009 to five years in prison.

State v. Mohamed Hamza

The unit obtained a jury conviction on December 21, 2009, against Mohamed Hamza for possession of khat (a dangerous drug), which was Arizona's first khat trial. The defendant was stopped by DPS, and a consent search of the truck uncovered a bag of a green plant material inside the cab, which turned out

to be khat. Hamza was sentenced on February 24, 2010, to 18 months probation.

State v. Lawrence Runke

The unit obtained a jury conviction on January 14, 2010, in Yavapai County against Dr. Lawrence Runke on 12 felony drug and racketeering charges. Dr. Runke was operating an illegal pharmacy, Global Medicines, in Cottonwood, where he was shipping drugs to people all over the country. In two years, he had

brought in more than \$2 million in revenue. He was sentenced on February 23, 2010, to four years in prison, followed by five years probation.

State v. Hilario Vasquez

The unit obtained a conviction on April 26, 2010, against Hilario Vasquez on charges of conspiracy and transportation of marijuana over the statutory threshold, arising out of the sale in June 2009 of 300 pounds of marijuana for \$135,000. A search warrant of the residence uncovered the 300 pounds of marijuana being broken down into smaller bundles by the defendant, more than \$24,000 in cash and rented vehicles that were to be used to transport the marijuana to Virginia and Florida. After waiving a jury trial, the defendant was found guilty in a bench trial. Vasquez was sentenced to 15.75 years in prison.



Mesa Police Sgt. Bryan Soller, Gilbert Police Chaplain David Land and Attorney General Terry Goddard lead the Memorial Procession at the 37th annual Peace Officer Memorial Service at Wesley Bolin Plaza in Phoenix.

Medicaid Fraud Control Unit

State vs. Dr. Corina Hollander

A Tucson podiatrist orchestrated a large-scale fraud involving prescription drugs for the past four years. The podiatrist became romantically involved with the two young men who are also charged in this case. She began giving the men fraudulent

prescriptions for oxycodone. Evidence shows that the podiatrist and her staff were filling fraudulent prescriptions under the name of at least four of her elderly patients and some of her staff's family. Interviews were conducted with these "acquaintances," and they all admitted that this was a scam that the

podiatrist was orchestrating.

Hollander and seven other defendants were indicted on June 28, 2010, by the Pima County Grand Jury. Hollander was indicted on charges of conspiracy, participating in a criminal syndicate, fraudulent schemes and artifices, trafficking in the identity of another person, forgery and acquisition of narcotic/dangerous drug by fraud.

State vs. Tekishia Scroggins

Between February 2004 and November 2005, Defendant Tekishia Kale Victoria Scroggins, aka Tekisha Greer, worked as an administrative secretary for CIGNA Medical Group. During that time period, she embezzled approximately \$700,000 from CIGNA by submitting fraudulent invoice information that resulted in the issuance of a voucher.

Greer used this scheme to create approximately 400 fake vouchers that caused CIGNA to issue more than 100 checks to redeem the vouchers. These checks, totaling over \$700,000, were deposited into fake business accounts that belonged to Donn L. Dove and Towan Butler. Many of the checks were then routed from the fake business accounts into Tekisha Greer's personal account at Arizona Federal Credit Union. Dove and Butler also withdrew money from the fake business accounts.

On March 18, 2009, all three defendants were indicted on charges of theft, fraudulent schemes and artifices, and money laundering.

On November 16, 2009, Scroggins pleaded guilty to theft, a

class 4 felony. Sentencing was set for September 8, 2010.

Defendant Dove entered a plea of guilty to theft and fraudulent schemes and artifices. Her sentencing was set for August 23, 2010. Defendant Butler pleaded guilty to theft. His sentencing hearing was set for September 22, 2010.

State vs. Olena Kulakova

From approximately May, 2006, through September, 2007, defendant Olena Kulakova owned and operated a medical facility named "We Care Clinic," which was located at 3620 West Bethany Home Road in Phoenix. At the "We Care Clinic," patients were treated by Dr. Paul Balikian, a licensed osteopath, and Kulakova, who was not a licensed physician in the State of Arizona or anywhere else in the United States. Kulakova exam-

Criminal Division *(continued)*

ined and treated patients, wrote prescriptions using Balikian's name, signed off on visit notes of patients she had seen and generally practiced medicine.

Kulakova originally purchased the "We Care Clinic" from Balikian in May, 2006, and retained Balikian as a contracted staff physician. Both Kulakova and Balikian examined and treated the patients, and wrote controlled substance prescriptions. When Kulakova wrote the prescriptions, she signed Balikian's name.

Both Balikian and Kulakova were indicted on January 14, 2009. Kulakova was indicted on charges of conspiracy, assisting a criminal syndicate, fraudulent schemes and artifices, theft, money laundering in the second degree and illegally conducting an enterprise.

On July 14, 2009, Kulakova en-



On September 14, 2007, Special Agents from the Attorney General's Office conducted a search warrant at the "We Care Clinic" doctor's office in Phoenix where business owner Olena Kulakova posed as a physician. Ms. Kulakova would bill the AHCCCS program for those patients that she would see while posing as a physician.

tered into a plea agreement and was sentenced to six months in jail, five years probation, and 300 hours of community service. She was also ordered to pay \$5,000 in investigative costs to the Medicaid Fraud Control Unit. On July 31, 2009, Balikian pleaded guilty to securing the proceeds of an offense. He was sentenced on Jan. 25, 2010, to six months probation, ordered to pay \$25,000 in

restitution to the Arizona Health Care Cost Containment System and pay \$1,000 in investigative costs to the Medicaid Fraud Control Unit.

State vs. Nakesha Phillips

Nakesha Phillips was stealing funds from a patient's personal bank account and left the patient alone for over a week. Shortly after these alleged incidents, the patient died. On June 16, 2009, Phillips was indicted on charges of fraudu-

lent schemes and artifices, theft and forgeries against a Medicaid patient. On August 7, 2009, Phillips entered into a plea agreement where she pleaded guilty to forgery and was sentenced to two and a half years in prison.

Tucson Unit

State v. Ruth Sons

Between 2003 and 2008, Ruth Sons embezzled \$973,010

from the Tucson Museum of Art (TMA), where she was employed as a bookkeeper and accountant. TMA is a local treasure for Tucson and was brought to the brink of bankruptcy and closure by of Sons' embezzlement scheme. In August 2009, she pleaded guilty to theft and fraudulent schemes and artifices.

Sons' position as an accountant gave her access to the museum's payroll, museum shop deposits, and petty cash accounts. For more than five years she conducted an elaborate embezzlement scheme.

The unit indicted Sons, and she pleaded guilty to two class 2 felonies. She was sentenced to five years in prison and ordered to pay \$973,010 in restitution.

State v. Calvin Ingram

Marana Police Department Officer Calvin Ingram was

indicted on charges related to his unauthorized access and/or misuse of the ACJIS computer system for personal purposes. ACJIS is a state-managed law enforcement database housing sensitive information relating to driver registrations, criminal backgrounds, home addresses, and other pertinent information of Arizona citizens. An ongoing investigation revealed that Ingram also accessed additional databases including "Spillman" (owned and operated by the Pima County Sheriff's Office) and "CopLink" (owned and operated by the Tucson Police Department) that he used without lawful purpose. The defendant pleaded guilty to four class 6 felonies for unlawful computer tampering, police officer, and his police officer certification was revoked as a condition of his plea. Sentencing is pending.

State v. Franklins d/b/a Hurricane Motors d/b/a Riteway Financial

Defendants were John David Franklin; his son John Jay Franklin; Hurricane Motors; and Riteway Financial of Tucson. The dealership never obtained licensure from the State and sold mostly older and high-mileage cars with high-interest loans to unsophisticated consumers with either no credit or credit problems. Vehicles sold were seldom registered in the name of the purchaser, and the defendants collected Arizona sales tax which was never paid to the State or refunded to consumers. Defendants also collected a vehicle license tax with each sale which was seldom paid to the State. Also collected with each sale was a "bank fee", customarily \$595, which was prohibited by law since defendants did not have necessary licensing to sell vehicles on credit. During the

five years they were in business, defendants made more than 500 sales, and just in prohibited transaction fees and taxes the fraud scheme netted as much as \$1 million. The owners and his son were indicted on criminal charges of illegal enterprise, fraudulent schemes and artifices, forgery and money laundering. The business and its assets were seized and a complaint filed seeking forfeiture as a financial remedy. Litigation is pending in both the criminal and civil cases.

State v. Carlos Munoz

A routine traffic stop by a DPS canine unit on Interstate 10 yielded 26 packages of methamphetamine weighing approximately 39 pounds and one package of cocaine weighing approximately two pounds concealed in sophisticated hidden compartments inside a

vehicle. The wholesale value of the methamphetamine alone exceeded \$800,000. The vehicle had crossed the U.S.-Mexico border six days earlier. The defendant, Carlos Munoz, was convicted and sentenced to seven years in prison.

Financial Remedies Section

State v. Ferguson

With assistance of the U.S. Department of Justice, the section reached an agreement in principle with defendant Charles Bruce Ferguson, and with British authorities, for the return of funds from accounts controlled by Ferguson in the Isle of Jersey for forfeiture. Ferguson pleaded guilty to theft charges in the criminal prosecution in September 2009, and three months later was sentenced to five years in prison. Ferguson operated elaborate investment schemes that defrauded at least

42 people of more than \$3 million. The section anticipates obtaining a final civil judgment for more than \$3 million (all of which, to the extent ultimately collected, will go to victim restitution); repatriation of Ferguson's funds from Isle of Jersey; commencement of victim restitution payments of at least \$525,000, and liquidation of forfeited personal property.

State v. Global Medicines

In December, 2009, the section obtained an order of forfeiture for approximately \$150,000 cash and five parcels of property worth over \$1,100,000 plus final judgment for approximately \$1.6 million against Lawrence Carl Runke, 66, of Clarkdale. This case involved Runke's operation of an illegal pharmacy, Global Medicines, in Clarkdale. The pharmacy purchased unapproved drugs from suppli-



Examples of some of the drugs, grenades, and guns seized by the AGO Task Force on various cases during the 2010 fiscal year as part of our border security efforts.

ers in India and resold them to consumers across the country. Runke was found guilty on 12 criminal counts by a Yavapai County jury and was sentenced to four years in prison.

State v. Iknadosian

The section served a seizure warrant in December 2009

based on information linking Phoenix gun store owner George Iknadosian to a drug-smuggling syndicate operating in Arizona in December, 2009. The defendant is accused of selling firearms to straw buyers for eventual export to Mexico. The civil forfeiture case against the defendant involves \$50,800

in cash, three properties, three vehicles and approximately 200 weapons.

Commercial Interdiction Cases

The Attorney General's Office partnered with the Phoenix Police Department to handle three commercial interdiction cases. The section filed an order of forfeiture for two seizures of cash from couriers at Sky Harbor International Airport – one for \$110,040 and the other for \$20,000. In the third case, \$124,800 in cash was seized that had been sent from Boston to Phoenix by truck in a shipping crate. The money was seized in a false bottom of the shipping crate that contained a dishwasher.

State v. Yeh

In July of 2009, the section and the U.S. Drug Enforcement Administration announced the

filing of felony charges and the Maricopa County Superior Court's issuance of a \$10 million seizure warrant against a Nevada doctor accused of writing illegal drug prescriptions for patients at a clinic he operated in Golden Valley, near Kingman in Mohave County. The doctor allegedly collected \$3.5 million in fraudulent insurance claims, including \$2.5 million from the State of Arizona. The 14 felony counts against Dr. Albert Szu Sun Yeh, 44, of Las Vegas, included conspiracy, assisting a criminal syndicate, money laundering and administering narcotic drugs. Funds totaling \$1.7 million were seized; fraudulent payments were estimated at more than \$3 million and an additional \$7 million in treble damages is being sought. Settlement negotiations are in progress.

State v. Sonoqui

The section filed a notice of pending forfeiture regarding the seizure of \$516,000 in cash and 19 vehicles in this case which came out of "Operation Tumbleweed," a year-long investigation that led to the indictment of 59 defendants and the breakup of the Garibaldi-Lopez drug trafficking organization. The binational organization was believed to have smuggled up to 400,000 pounds of marijuana annually from Mexico into the United States across the Tohono O'Odham Indian Reservation since 2003. The operation was one of the largest takedowns of a drug-smuggling organization in Arizona history.

State v. Angulo

This case came to the attention of the Phoenix Police Department after a homicide outside of a restaurant and bar owned

by Adam Angulo. It was subsequently determined that Angulo, a former gang member, was not the bona fide owner of the liquor license attached to the bar, and that the bar business had been acquired with the proceeds of marijuana trafficking. In a six-month period, Angulo sold more than 1,000 pounds of marijuana. The final order of forfeiture was obtained March 4, 2010, resulting in the forfeiture of \$1.2 million in cash and bank accounts, the bar's liquor license, nine vehicles, jewelry and several weapons.

State v. Ibarra-Ramirez

The Ibarra-Ramirez Enterprise, investigated by the Phoenix Police Department, engaged in illegal alien smuggling. Serving primarily as transporters, the criminal enterprise would on a daily basis use vans to shuttle aliens throughout the country,

averaging 10 to 15 people per load. The section obtained a final order of forfeiture on August 19, 2009, obtaining \$33,230 in cash, several weapons and six vehicles.

Office of Victim Services

State v. Frederick Sevilla

The defendant in this case was originally indicted in 2002 on several counts of sexual conduct with a minor and molestation of child. After a very emotional trial, the jury found the defendant guilty and sentenced him to 130 years in prison. On appeal, however, the conviction and sentence were overturned seven years after the indictment. The victims were devastated, as they were faced with the possibility of testifying again, now as young adults. Fortunately, after arduous plea

negotiating between attorneys, a settlement was reached, satisfying all parties. In their victim impact statements, the victims were able to articulate to the court how they were traumatized by this defendant. In the end, the defendant was sentenced to 20 years in prison, followed by lifetime probation. The victims said they could finally breathe a sigh of relief.

State v. Debra Milke

It was almost 20 years since the victim in this case had seen his ex-wife, the defendant. The last time he saw her, she was being sentenced to death for the murder of their son, Christopher. In January 2010, the victim sat with the victim advocates in the same courtroom with the defendant for the first time in almost two decades. The appeal issue dated back to when the defendant was originally

investigated. She claimed she had not properly been given her Miranda rights. After three days and various interviews with the media, the victim made it through this very long evidentiary hearing, feeling satisfied after it was over. The judge ruled that Milke had been given her rights properly.

State v. William Veach

In November 2009, defendant William Veach was sentenced to 10 years in prison for manslaughter. The defendant was convicted of killing an 18-month-old child, whose mother was dating the defendant at the time of her death. Though the crime occurred in 2001, the case was not picked up for prosecution until 2008 when a cold case detective with NCIS pushed to have the case

re-examined and the Attorney General's Office agreed to prosecute.

The victims in this case lived in Illinois, so all of the contact was done via telephone and email. Since they were not able to participate in court proceedings, it was the advocate's responsibility to keep them updated on every aspect of the case. Fortunately, the victims were able to come to Arizona for the sentencing hearing to present their victim impact statements in person. It was difficult for everyone involved to come to terms with the fact that a young child had been killed. The AGO victims advocate worked effectively to keep everyone as calm as possible. Being able to assist this family through such a tragic life event was very much appreciated by the family.



Chief Counsel Susan Segal

Mission:

To pursue those who prey upon the public and threaten the economic and environmental well-being of Arizonans.

Division Summary

The Public Advocacy Division is made up of the Consumer Protection and Advocacy Section and the Environmental Enforcement Section.

Consumer and Public Advocacy (CPA) Section Highlights

Consumer Litigation Unit

As Arizona's housing crisis persisted, fighting mortgage fraud continued to be a top priority. Thousands of struggling homeowners sought to modify the terms of their mortgage loans. Mortgage lenders and loan servicers, however, often lost documents, gave contradictory messages to consumers, failed to timely respond to requests and otherwise made the loan modification process extremely difficult for consumers.

The Office received numerous consumer complaints against

lenders for deceptive practices in handling loan modification requests, and successfully intervened in many cases. In some instances, we were able to persuade lenders to stop foreclosure proceedings and to offer a loan modification to the homeowner instead.

With so many homeowners struggling to keep their homes, many "foreclosure rescue consultants" sought to capitalize on their difficulty. Promising homeowners they could prevent foreclosure by negotiating with lenders to obtain a loan modification, they charged thousands of dollars in upfront fees then often failed to deliver on their promise or went out of business. The Office also obtained

thousands of dollars of refunds for consumers who paid upfront fees, investigated several companies and sent warning letters to dozens more.

Significant mortgage and loan modification fraud cases included:

• Hope for Homeowners Now

The unit sued this company and its principals based on misrepresentations regarding the company's home loan modification services and its failure to comply with the Credit Services Organizations Act. We obtained default judgments against the company, awarding \$424,935 for consumer restitution and \$155,000 for civil penalties. The court also issued an order prohibiting the defendants from engaging in loan modification or loan origination activities in Arizona.

• Taken Care of Investments

Taken Care of Investment is a foreclosure rescue operation that promised to help homeowners by purchasing their home, allowing the homeowners to rent the home for a year, and then allowing the homeowner/tenant to repurchase it. The rental terms were so onerous that the tenants were often evicted, foreclosing repurchase options. The properties were sold to investors, further limiting the repurchase ability of the original homeowners. After suing last year, the Office secured a settlement requiring the defendants to pay \$391,000 to consumers as restitution plus another \$300,000 in civil penalties to the State.

• Discount Mortgage Relief

The unit filed a complaint against Discount Mortgage Relief on June 4, 2010, and

Public Advocacy Division (continued)

obtained a temporary restraining order prohibiting this loan modification company from making misrepresentations to consumers and from receiving any money from consumers. Since the TRO was issued, the defendants stipulated to a preliminary injunction that prohibits the company from making misrepresentations to consumers and requires it to promptly

address consumer refund requests. Litigation is continuing.

- **Asset Creation, LLC**

This loan modification company targeted Spanish-speaking homeowners. It advertised it could obtain a 50 percent reduction in mortgage payment (for upfront fees of more than \$3,400) and promised it could obtain other specific results for con-

sumers. We filed a complaint against Asset Creation and its principals in January 2010. The defendants appear to have gone out of business and have failed to comply with discovery requirements. Litigation is continuing.

- **Santoya Financial Company, LLC.**

The unit obtained a consent judgment against this Phoenix-based company that was engaged in loan modification activities and misrepresented its status as a HUD-approved foreclosure counseling agency in its ads. Soon after we sued the company in July 2009, it stopped soliciting consumers for loan modification services and has since fully refunded all consumers who paid it money, except for a few the company was still

working with to obtain a loan modification. Those consumers will receive a full refund if Santoya is unsuccessful in obtaining a loan modification for them. The consent judgment includes injunctive relief, \$30,000 in civil penalties and \$5,000 in costs.

- **Arizona Investments dba AZI Rent-2-Own, et al.**

Arizona Investments, Silverstein, Zandonatti (AZI) with the assistance of others, including RE/MAX All Executives and Tucson Mortgage, defrauded or should have known they were defrauding novice real estate investors, lenders, and rent-to-own homebuyers. AZI facilitated deceptive loan applications in furtherance of a rental-property scheme and engaged in a variety of deceptive practices. The deceptive “no qualifying” advertising targeted consum-

ers with little or no chance of being able to qualify to purchase the property due to their poor credit and low income, factors which AZI deliberately ignored. Settlements totaling \$120,000 have been obtained against three defendants so far.

- **Ending upfront “rescue” fees:**

In addition to civil and criminal enforcement actions, the Attorney General led the fight for a new law aimed at the key factor contributing to the growth of loan modification scams: the ability to charge large upfront fees. SB 1130 makes it illegal to charge upfront fees for foreclosure rescue services. Violations of the new law can – and will – be enforced under the Arizona Consumer Fraud Act.



The Office's fraud prevention efforts included the production of new brochures and videos, including one on how to avoid charity scams and another called “Smart Seniors” with advice on identifying scams and fraud.

State Agency Unit

- **Title Security Agency of Arizona**

We represented the Department of Financial Institutions in Title Security Agency's appeal of the Department's cease and desist order to compel best practices and payment of a civil penalty. The company is a mortgage broker that agreed to a negotiated \$200,000 civil money penalty and to employ best practices with regard to future business. Title Security Agency violated various escrow agency statutes by its failure to maintain internal controls over its business.

- **Mortgages Ltd.**

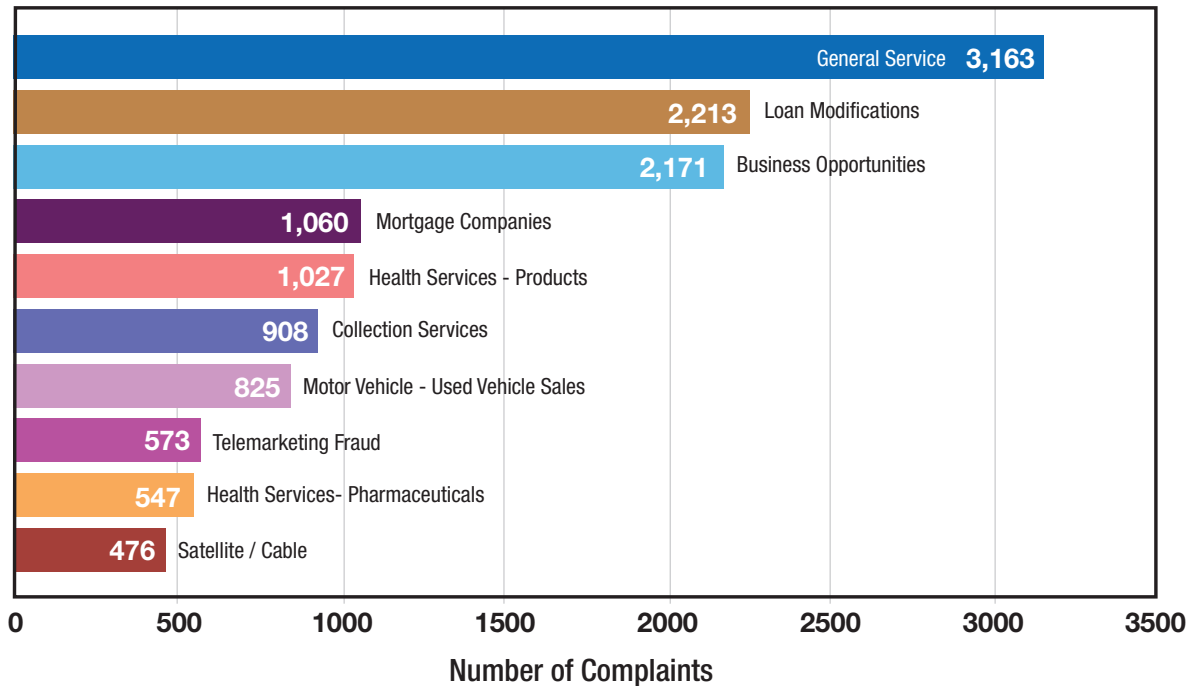
We represented the Department of Financial Institutions in an action to revoke the mortgage banker's license of Mortgages, Ltd. The company

consented to the revocation of its mortgage banker's license on July 28, 2009. Mortgages Ltd. was one of the largest bankruptcies filed in the state of Arizona. The consent to revocation was based upon violations of numerous mortgage banker statutes.

- **Department of Insurance Case**

We represented the Department of Insurance in an emergency action before the Superior Court regarding two insurance companies, Thureus Insurance Group, Inc. and Astraea Risk Retention Group, Inc., both owned by Arrow Trucking Company. Astraea provided various insurance policies to Arrow. Thureus provided reinsurance to Astraea and wrote direct surety and employer's liability coverage for Arrow. On December 22, 2009, Arrow

Consumer Complaints Fiscal Year 2010 (July 1, 2009 - June 30, 2010)



Trucking abruptly suspended operations. The company sent employees home, let payroll checks bounce, stopped payment on fuel cards leaving drivers stranded at rest stops throughout the country, and creditors repossessed trucks and trailers. The department

contacted us with an urgent request to file suit for an emergency action to protect defendants' assets and their ability to meet obligations to policyholders and claimants. By December 24, 2009, we prepared numerous documents and appeared before the Superior Court. On Dec.

30, we returned to the court in a separate action to obtain an order for appointment of receiver and injunction to liquidate the company. As a result of the Office's quick action, the department successfully prevailed at both hearings and helped mitigate damages.

Antitrust Unit

• DRAM

In June 2010, the Antitrust Unit, along with 32 other states and private class counsel, reached a \$173 million settlement that resolved antitrust claims against several international Dynamic Random Access Memory (“DRAM”) manufacturers. The settlement resolved the states’ 2006 lawsuit alleging the DRAM manufacturers had fixed prices and committed other violations of state and federal antitrust laws.

DRAM is common form of electronic memory, which stores and retrieves data at high speeds. It is found in a wide variety of computer, telecommunication and consumer electronics products.

The amount Arizona’s state and local agencies will

recover as a result of the settlement, which had not yet been filed with the court and is subject to court approval, had not yet been determined.

The DRAM manufacturers named in the lawsuit include the American companies Micron Technology, Inc. and NEC Electronics America, Inc., as well as foreign companies Infineon Technologies A.G. in Germany; Hynix Semiconductor, Inc. in South Korea; Elpida Memory Inc. in Japan; Mosel-Vitellic Corp. in Taiwan; and their American subsidiaries.

• Pinetop-Lakeside

In February 2010, the Antitrust Unit settled antitrust claims against the Town of Pinetop-Lakeside and contractor V Mountain Construction, Inc. For more than 14

years, Pinetop-Lakeside, V Mountain and its predecessor had restrained trade by entering into several contracts for road construction, maintenance and snow removal without following the town’s competitive purchasing and procurement policies. These contracts denied taxpayers the benefits of free and open competition and denied other contractors an opportunity to compete for the town’s road services business.

As a result of the settlement, V Mountain paid a civil penalty of \$10,000. The town paid \$5,000 as reimbursement of the Attorney General’s investigative costs. The town also agreed to obtain additional procurement training for employees and procure special audits of its purchasing activities

Protecting Seniors

• *State v. Consumer Benefits Research Group*

On June 30, 2009, the State filed a lawsuit against Mesa-based Consumer Benefits Group (CBG) for deceptively soliciting seniors by phone to sell an “Identity Fraud Program.” Mostly elderly consumers told the Attorney General that CBG telemarketers badgered them during the high-pressure calls to sell identity theft protection. By posing as “investigators” CBG telemarketers scared seniors



Attorney General Goddard speaks with an attendee at the Senior Anti-Crime University in Sun City West in January.

into thinking their identity was at risk and that they needed to spend \$388 for the “Identify Theft” program, and then another \$388 for an upgrade. Litigation is pending

“Government Notice” Scams

Attorney General Goddard went after several companies for deceiving consumers into thinking the companies were part of the government or offering services required by law. Representative cases include:

• Property Tax Review Board

Goddard filed suit against Michael McConville, a California resident, and Property Tax Review Board for sending thousands of letters to Arizona consumers falsely stating that consumers could reduce their property tax assessments through appeal by paying a \$189 “process-

ing fee.” In fact, the time for appealing passed long before the solicitation was mailed. In collaboration with the U.S. Postal Service, Goddard returned over 1,000 checks to consumers. The Office also obtained a temporary restraining order preventing the defendants from soliciting business in Arizona.

- **Board of Business Compliance**

This company mailed a solicitation to small businesses in Arizona falsely implying that businesses were required



Attorney General Goddard talks with WWII Veteran Frank Garcia at the Veteran's Day Centennial Parade and Celebration in Clifton, Ariz., on Nov. 7, 2009

by law to submit corporate minutes to the Corporation Commission, according to the complaint. The company charged over 550 Arizona businesses a \$125 fee for this entirely unnecessary “service.” The business has stopped operating in Arizona.

Tobacco Enforcement Unit

In settlement of litigation initiated by the State to recover health care costs resulting from the use of tobacco products by its citizens, Arizona entered into the Tobacco Master Settlement Agreement (“MSA”) on November 23, 1998. This landmark settlement agreement also resolved similar actions filed by 51 other jurisdictions against the major tobacco manufacturers. The MSA requires those tobacco manufacturers that

joined the agreement (“participating manufacturers” or “PMs”) to make significant annual payments to the settling states in perpetuity.

Community Events

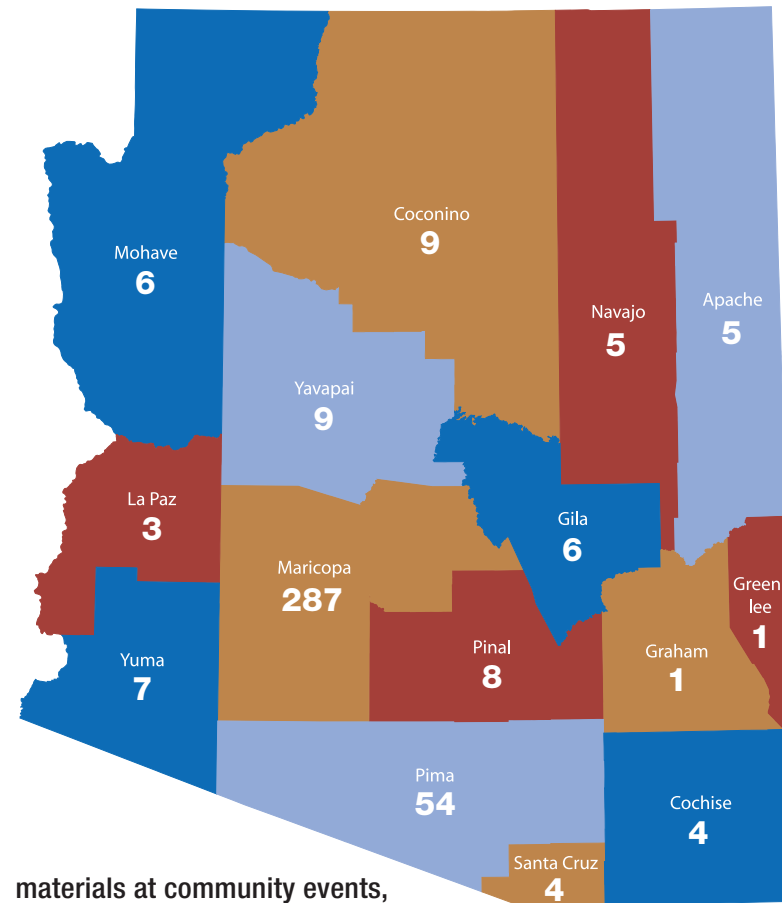
Attorney General Goddard, staff and volunteers hosted and participated in 409 community events across Arizona during the year. These events included Crime and Fraud Prevention Forums, Senior Anti-Crime Universities and presentations on top 10 consumer scams, identity theft, Internet safety, civil rights, protecting seniors, victims’ rights and life care planning. The map (at right) shows the number of events in each county.

More than 200 Fraud Fighter Volunteers and Senior Sleuths assist the Attorney General’s Office. They help make presentations and distribute

In 2010, Arizona received approximately \$105.4 million in total MSA payments. Since 1998 Arizona has received more than \$1 billion in

settlement payments.

Under state law, all money received by the State from the MSA are dedicated entirely to the Arizona Health Care Cost



materials at community events, answer Helpline calls and staff the Office’s Satellite Centers.

Containment System (“AHC-CCS”). The Office’s Tobacco Enforcement Unit protects Arizona’s MSA payments by diligently enforcing Arizona’s qualifying statute. During FY 2010, the unit worked at both the state and national level to ensure that Arizona will continue to receive its full allocated MSA payment. These efforts included:

- (1) Participating in efforts to recover defaulted MSA payments and defend the state’s ability to enforce the MSA’s payment provisions;
- (2) Diligently enforcing the qualifying statute and
- (3) Monitoring the state’s efforts to receive the maximum recovery in bankruptcy proceedings initiated by PMs.

With the exception of a single NPM which filed for bankruptcy protection, the unit obtained full compliance for sales made in Arizona during the year.

Enforcement of public health provisions: The unit has also been charged with enforcing the public health provisions of the MSA, especially when violations of those provisions have a direct impact on Arizona citizens. The public health provisions contained in the MSA place restrictions on the PMs’ marketing practices in an effort to protect public health.

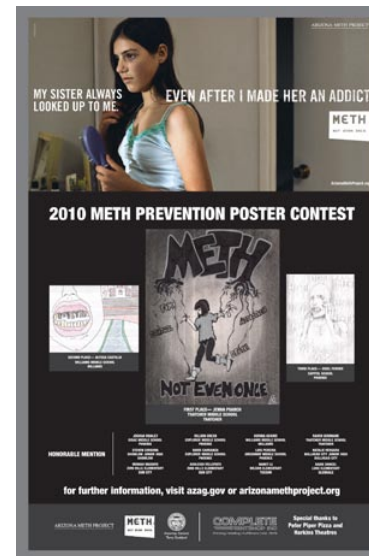
In April of 2010, Arizona, along with 39 other states, reached an agreement with Valero Retail Holdings Inc., and Valero Marketing and Supply Company, based in San Antonio, Texas. Valero is a large national oil company that owns 1,000 convenience store outlets and has nearly 4,000 franchises. Valero has 92 company-owned or franchise outlets in Arizona. Under the Assurance of Voluntary Compliance, Valero will instruct clerks to check identifi-

cation for all tobacco customers who appear to be under age 27, use security videotapes to monitor compliance by clerks, eliminate self-service tobacco displays and vending machines, perform random compliance checks involving youthful tobacco purchasers, and implement other safeguards. Valero also agreed to change the terms of its franchise contracts so that tobacco sales to minors must be reported to Valero, and illegal sales could result in loss of the franchise.

- **Arizona “Counter Strike” Youth Tobacco Program:** In partnership with the Arizona Department of Health Services, the Attorney General’s Office has developed and maintained the Arizona “Counter Strike” Youth Tobacco Program. Its goal is to reduce youth access

to tobacco in retail outlets by systematically monitoring retailer compliance with state laws which prohibit the sale of tobacco products to minors. The program also serves to encourage local enforcement of these laws. During FY 2010, the program conducted 2,561 undercover inspections throughout

Arizona in both rural and urban communities. With the assistance of local law enforcement agencies, 305 criminal citations were issued to retail clerks who violated Arizona law by selling tobacco products to minors during undercover inspections. This fiscal year, the program reported a three percent



The Office held two poster contests during the year. The Meth Poster Contest was co-sponsored by the Arizona Meth Project. The “Why Should I Care about Elder Abuse?” Poster Contest was co-sponsored by the Arizona Elder Abuse Coalition and the Area Agencies on Aging.

increase in its statewide compliance rate, marking the highest compliance rate since the program's inception in 2001.

Environmental Enforcement Section (EES) Highlights

Mission

To provide the highest quality legal advice and representation to client agencies for the fair enforcement of civil environmental law and civil natural resources law.

Overview

The Section provides advice, enforcement and representation activities related to state and federal environmental and natural resources law. The Section is divided into three components. The Civil Unit

advises, represents and litigates on behalf of the Arizona Department of Environmental Quality (ADEQ) for various programs, including water quality, safe drinking water, hazardous waste and solid waste as well as waste management practices. The Tanks and Air Unit advises, represents and litigates on behalf of ADEQ's air and underground storage tank programs. The Superfund Programs Unit advises, represents, and litigates on behalf of ADEQ involving matters arising under Superfund laws.

Major Accomplishments

- **Asarco Bankruptcy:** In 2005, the section filed claims in the Bankruptcy Court for environmental liabilities stemming from Asarco's copper mine operations and related activities in Arizona. We reached settlements with

Asarco which provide more than \$25 million to address environmental damage from several now-closed Asarco mines in Arizona; \$13 million to clean up the contamination in local residential neighborhoods resulting from contamination from the Hayden Smelter, with additional work to be done at the facility property; and \$4 million for construction and maintenance of wetlands and other improvements on the San Pedro, plus the transfer of three ASARCO-owned tracts of land to the Arizona Game and Fish Commission (one tract has water rights) consisting of approximately 1000 acres on the Lower San Pedro River to benefit wildlife (total value of \$7-\$8-5 million).

EES successfully defended the settlement agreements against the objections of Asarco's parent company and other creditors in court. In his decision upholding the settlements, Bankruptcy Judge Richard S. Schmidt stated, "The settlement agreements represent a significant milestone in the nearly four-year history of this enormously complex bankruptcy case and in the history of governmental efforts to remedy environmental injuries." On December 9, 2009, Asarco's parent company consummated its plan to reorganize Asarco, and paid 100 percent of Arizona's claims plus interest. Without the settlements, costs for remediation of the sites would have fallen to the state.

- **State v. Far West Water And Sewer Co., Inc. and Defendant H & S Developers, Inc.:** After years of public complaints and noncompliance of water and air quality control requirements at the seven Far West Water And Sewer Co., Inc. ("Far West") wastewater treatment plants, EES, on behalf of the Arizona Department of Environmental Quality, filed a 50-count complaint against Far West and a related corporation, H & S Developers, Inc. Far West, the current owner and operator of the seven treatment plants, which serve 6,500 households, constructed and operated the plants without obtaining permits, provided reclaimed water for reuse without authorization, discharged wastewater in violation of the Aquifer Protection Permit Program, and failed

to control sewage odors from the plants. Far West also violated the Safe Drinking Water Program at its drinking water facilities.

- In June 2010, the defendants agreed to a settlement that included (1) a \$150,000 penalty; (2) a \$150,000 supplemental environmental project for the purchase of equipment to remove water from sludge, and (3) a schedule of injunctive relief for the completion of a multimillion-dollar project to upgrade its treatment plants and sewage collection systems. Far West will place a deferred penalty of \$200,000 in a secured bank account pending completion of the injunctive relief. The \$200,000 could be refunded, in full or part, depending on Far West's success with its project.

- **Heritage Environmental Services:** This case arose from a fire that erupted at the Heritage hazardous waste storage facility near Coolidge in August 2006. Several pallets of nitrocellulose-containing waste movie film spontaneously ignited after being stored in direct sunlight. Heritage had already settled with ADEQ and the Attorney General in March, 2006, for other violations at this facility. EES reached a settlement with Heritage for a \$75,000 civil penalty and a \$50,000 Supplemental Environmental Project involving the removal of hazardous materials from area schools.

- **Meadow Valley Contractors:** This case involved the illegal operation of a hot mix asphalt plant near Buckeye in 2007 and 2008. Meadow Valley operated its plant in

excess of the allowed hours of operation, and its violations included numerous failures to conduct observations of visible emissions (dust) from the facility, and failure to conduct inspections and have properly qualified personnel to control dust. A settlement was reached that required Meadow Valley to pay a civil penalty of \$80,000 and file an application for an individual air quality permit for its asphalt plant, instead of the general permit under which it had been operating. The individual permit will include more specific emissions controls tailored to the Meadow Valley facility.

- **LiquidTitan, LLC:** This settlement resolved an environmental enforcement action against LiquidTitan for violations of a number of air qual-

ity, solid waste and hazardous waste laws while operating its used oil refinery in Parker, Ariz. In connection with the case, a defamation action brought by LiquidTitan against the State and the Department of Weights and Measures was dismissed with prejudice. The enforcement case was settled for a \$55,000 civil penalty. It was estimated that settling the defamation case saved over \$100,000 in costs and attorney time. LiquidTitan spent more than \$900,000 correcting its violations and assuring future compliance with state environmental quality laws, a major factor in negotiating the settlement.

- **Aftermath Solutions:** This case is a biohazardous medical waste enforcement action. Aftermath failed to register as a transporter of biohazardous medical wastes as required

under Arizona law. Aftermath agreed to pay a civil penalty of \$5,000 and provide a Supplemental Environmental Project that will train first responders in the dangers of blood-borne pathogens as well as provide personal protection kits to them. The project has an estimated valued of \$200,000.

- **ASARCO (unrelated to the bankruptcy):** This case stemmed from a release from a slurry pipeline at the Hayden mine. The pipeline ruptured and spilled mine tailings slurry into a state waterway. ASARCO reported the release and performed the required cleanup actions in a timely manner. Additionally, ASARCO spent \$1.7 million replacing the slurry pipeline with one that would not be susceptible to this type of failure. The company agreed to pay a civil penalty of \$20,000.

Public Advocacy Division (continued)



Left to right: Jane Irvine, Director, Community Outreach and Education, Dominique Medina, Web Master/Executive Project Assistant, Terry Goddard, Arizona Attorney General, Sarah Acer, Constituent Services Manager, Thomas Reade, Unit Chief, Crime, Fraud and Victim Resource Center and William Morris, Intern.

AZAG.GOV Recognized as Best Overall Website for 2010

The Arizona Attorney General's website (www.azag.gov) was recognized as the "Best Overall Website" by the Conference of Western Attorneys General (CWAG). The Office's website was recognized for its comprehensive use of social media, smooth navigation, inviting appearance and concise presentation of information.

The website team consisting of Dominique Medina, Sarah Acer, William Morris, and Jane Irvine completed a major update of the site last year to make the website more efficient and easy to use. In addition, Thomas Reade



provided the know-how to successfully utilize social networking sites to further enhance communications for the AGO.

The website redesign completed in January 2010 was undertaken as part of a state government initiative with Government Information Technology Agency (GITA). The AG site is now linked with all Arizona State Govern-

ment sites (www.az.gov) driving traffic to the site along with a presence on Facebook, YouTube and Twitter.

Since the redesign, the hits to AZAG.gov site have increased from 55,000 to 165,000 per month along with 4000+ Facebook friends and Twitter followers.

"Our innovative web team worked hard to make our site as user-friendly, reliable and helpful to the public as it can be. With no room in the downsized AGO budget to hire a web designer, our team stepped up and enthusiastically taught themselves new skills and forged ahead until the job was completed," Goddard said.



Chief Counsel Nicole Davis

Mission:

To provide the Arizona Department of Economic Security (ADES) with high-quality representation and timely legal advice that promotes the safety, well-being and self-sufficiency of children, vulnerable adults and families.

Division Summary

The Child and Family Protection Division (CFP) provides comprehensive legal representation to ADES, with more than 320 employees in locations throughout Arizona. CFP is divided into three practice groups, and now includes a newly-formed Division-wide Appellate Team:

- *Protective Services Section (PSS)*
- *Child Support Enforcement Section (CSE)*
- *Civil & Criminal Litigation and Advice (CLA)*

In FY2010, the Appeals team was restructured to streamline and maximize resources. The Appellate Team represents ADES in the Arizona Court of Appeals, Arizona Supreme Court, and the Federal District Courts. During FY2010, the Division saw a 20 percent growth in PSS appellate filings alone with a total of 616 appeals filed. The Division prevailed in 95 percent of all appeals resolved during this fiscal year.

Protective Services Section

The Protective Services Section (PSS) of the Child and Family Protection Division provides comprehensive legal representation to ADES and its Child Protective Services (CPS)

branch. PSS shares CPS' goal: To protect children, preserve families and achieve permanency for Arizona's children. The attorneys and staff of PSS provide legal representation to CPS throughout Arizona's 15 counties with offices in



Flagstaff, Kingman, Mesa, Phoenix, Prescott, Sierra Vista, Tucson and Yuma.

In FY2010 PSS attorneys and staff:

- protected more than 11,344 children from abuse and neglect.
- filed 3,162 new dependency petitions.
- filed 1,515 severance

motions and petitions.

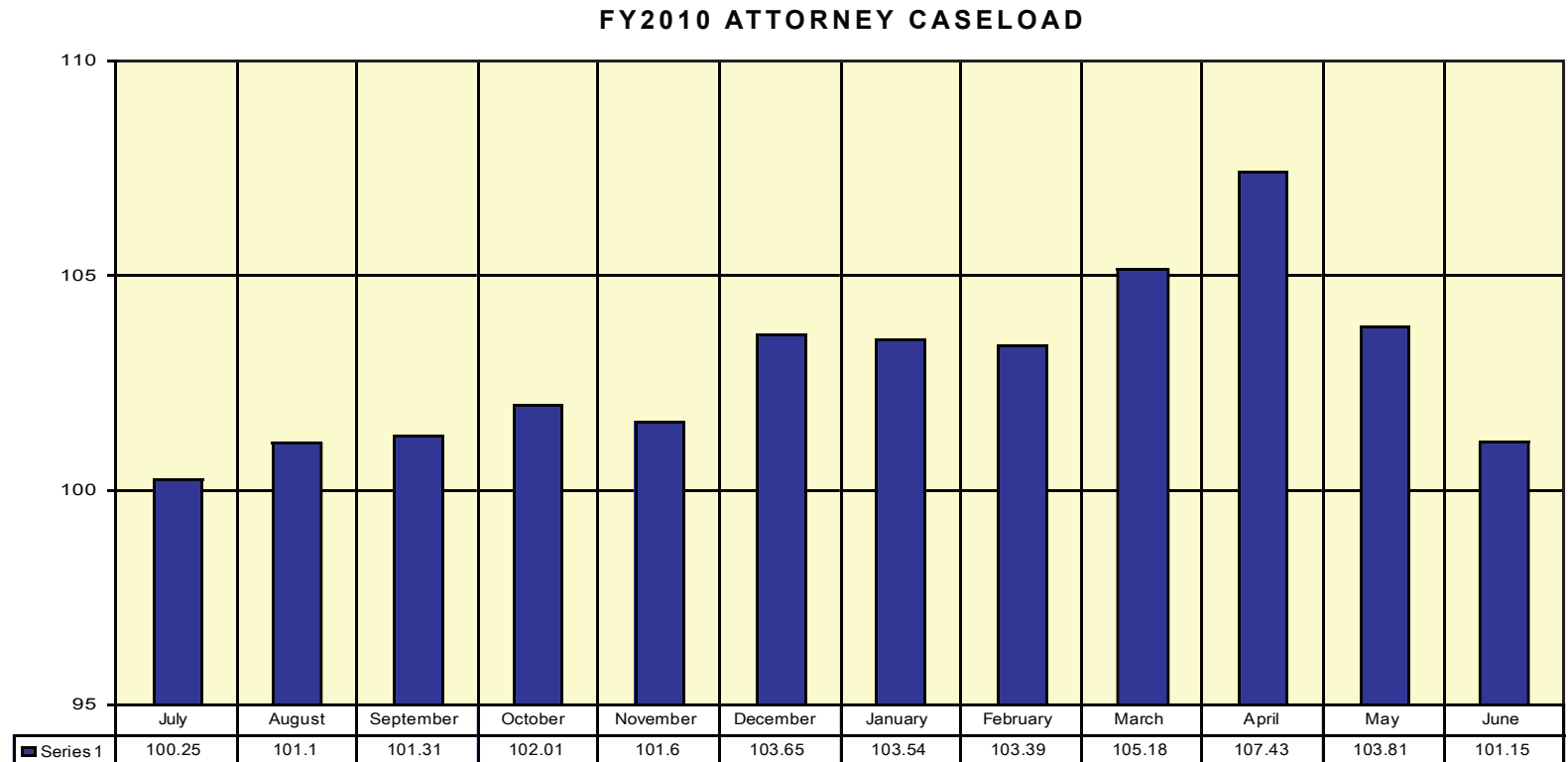
- filed 362 guardianship motions.
- filed 249 adoption petitions.
- helped reunite 1,340 children with their parents.
- placed 540 children with permanent guardians.
- helped 1,619 children be adopted by relatives or foster placements.

Child and Family Protection Division (continued)

Accomplishments

In FY2010, caseloads remained high while personnel shortages were felt statewide. Despite this fact, the dedicated staff continued their work on Best Practices to ensure high-quality legal work and compliance with legislative and local rule changes. PSS Management instituted a legal writing review process that helps produce the highest quality written work product by its lawyers.

In 2009, PSS migrated to the Office's Legal Files Case Management System. During FY2010, due to the customization of PSS data tracking in Legal Files, PSS is now able to better track important aspects of a very specialized juvenile litigation practice and generate valuable reports to identify trends that impact child safety. Attorneys are now able to more efficiently



The ABA has recommended that the dependency caseload for an agency attorney should be 60-80. As reflected in the chart, PSS attorney caseloads in FY2010 were significantly higher than this standard.

PSS filings remained constant and attorney caseloads remained high with some minor fluctuations throughout FY2010.

enter and obtain information regarding their cases and further increase productivity. PSS is moving towards a paperless case management system, and a pilot project is underway in Pima County to expand remote access

to the case management system from court to make the best use of attorney time and resources.

Policy & Training

Despite severe budget cuts, PSS lawyers continued to advise

ADES on legal issues arising from federal and state statutes, regulations and court decisions. In addition, PSS lawyers provide significant training and support to CPS caseworkers, supervisors, members of the judiciary and

various stakeholders regarding Arizona's child welfare system.

Trial Practice

PSS attorneys engage in an intense, litigation-focused practice in the juvenile division

of the Arizona Superior Court. Each year trial lawyers in PSS handle thousands of legal actions generally referred to as “dependency cases”. These actions serve to protect abused and neglected children when they are removed from their parents and placed in the legal custody of CPS by the courts. Protective and remedial social services are instituted for the family to help achieve reunification. If attempts to reunite families prove unsuccessful, PSS attorneys represent CPS in actions to achieve permanent placement of children through severance of parental rights, guardianship and adoption procedures.

Child Support Enforcement

The Child Support Enforcement (CSE) Section of the Child and Family Protection Division seeks to ensure that children receive the financial support from their parents to which they are entitled. The Section provides legal advice and representation to ADES’ Division of Child Support Enforcement (DCSE). CSE handles a high-volume litigation caseload to establish paternity and to establish, modify and enforce child support orders.

Because more than 44 percent of Arizona’s children are born to unwed parents, establishing paternity is often the first step in the child support process. After paternity has been established, CSE can take legal action to pursue child support. DCSE currently has more than 210,000 open child support cases statewide. The litigation caseload for the CSE Section is between 7,000 and 8,000 ongoing cases.

In FY2010, CSE helped Arizona children receive the support to which they were entitled by:

- Establishing paternity for 2,249 children.
- Establishing new child support orders for 5,264 families.
- Obtaining child support judgments of over \$31.1 million.
- Resolving 5,112 actions for modification of support.
- Representing the State in over 25,000 court appearances.
- Assisting DCSE to collect over \$360.7 million in support.
- In bankruptcy cases, collecting \$418,351 in support.
- In non-Family Court litigation relating to liens and foreclosures, collecting \$471,871.

Civil and Criminal Litigation and Advice

The Civil and Criminal Litigation and Advice (CLA) Section of the Child and Family Protection Division is divided into two units: Civil and Criminal. The CLA Civil Unit provides advice and representation for all ADES programs, except Child Protective Services and Child Support Enforcement.

Programs include: Adoption Subsidies, Developmental Disabilities, Unemployment Insurance and Tax, Vocational Rehabilitation Services, Food Stamps and Cash Assistance, Certification of Child Care and Foster Care Providers, AHCCCS Long Term Care Services, Adult Protective Services, Behavioral Health Services for dependent children, and collection of public benefit-related debts owed to ADES. CLA also advises and represents ADES regarding its business operations, including hiring and discipline of employees; compliance with laws governing workplace conduct and safety; contracts for service providers, and facilities management.

The CLA Criminal Unit prosecutes individuals and contractors who defraud the State through ADES programs, as well as parents who willfully fail to provide support for their children or who escape from the child support work furlough program.

In FY2010, the CLA Civil Unit:

- Opened, litigated and/or reviewed 681 administrative litigation and civil cases.
- Opened and reviewed 243 contracts, leases and/or amendments.
- Obtained 241 civil judgments in civil collections cases totaling \$579,094.

Child and Family Protection Division *(continued)*

- Collected \$389,435 through wage and bank garnishments.
- Filed 249 civil collections cases.
- Opened over 138 “matter” files for tracking significant legal advice
- provided to ADES.
- Responded to over 916 subpoenas and requests for public records.
- Reviewed over 113 Intergovernmental Agreements and Amendments.

The CLA Criminal Unit:

- Filed 176 criminal cases.
- Obtained 168 individual sentences.
- Obtained restitution orders totaling \$452,279.
- Collected \$269,683 in restitution prior to sentencing.
- Obtained orders for fines totaling \$11,400.
- Obtained orders for 4,498 hours of community service.

Civil Cases By Program	Total
Adoption Subsidy	1
Adult Protective Services	32
Arizona Early Intervention Program-AZEIP	8
Business Enterprise Program (BEP)	3
Child Protective Services (use for PSS)	1
Childcare Administration	10
Comprehensive Medical And Dental Program	4
Department of Economic Security (DES/DMR)	1
Division Of Benefits/Med Elig (DFS)	1
Division of Children Youth and Families	2
Division of Developmental Disabilities	192
Equal Employ Opportunity Commission/Office of Equal Opportunity	26
Foster Care Licensing	16
Guardian Subsidy	1
Internal Affairs I/A	46
Mental Health (CYF/CPS Cases)	10
Personnel (all programs)	141
Protective Services Review Team	131
Unemployment Insurance Benefits/ Unemployment Insurance Contributions	37
Vocational Rehab & Blind Services	18
Grand Total	679

Civil Collections			
Program	Filed	Judgments Entered	Total Judgments
Cash Assistance	7	8	\$13,214.97
Any Combination	8	11	\$31,960.90
Childcare Assistance	10	14	\$61,964.21
Div. of Developmental Disabilities	9	6	\$47,649.35
Employee Related	29	32	\$51,297.08
Food Stamp	6	3	\$10,459.80
Food Stamp Plus Another	7	8	\$17,534.00
Parental Assessment	2	2	\$1,653.00
Unemployment Insurance Benefits	170	157	\$343,361.07
Grand Total	249	241	\$579,094.38

Garnishment Collection Summary	
3rd Quarter '09	\$113,761.37
4th Quarter '09	\$112,350.14
1st Quarter '10	\$90,186.78
2nd Quarter '10	\$ 73,137.08
Grand Total	\$389,435.37

Child and Family Protection Division *(continued)*

Criminal Cases						
Program	Cases Filed	Cases Sentenced	Restitution Ordered	Restitution Paid Prior to Sentencing	Fines Collected	Community Svc
Cash Assistance	8	15	\$16,709	\$9,102	\$1,200	344
and Food Stamps			\$15,736	\$10,730		
Child Care Recipient	3	2	\$9,203.00	\$0.00		155
Child Support Escape		2	\$0.00	\$0.00		100
Employee DCYF	2	1	\$8,565.57			80
Employee JOBS	1	1	\$9,920			
Food Stamp	7	12	\$40,865	\$18,831	\$1,200	214
UIB	155	135	\$351,281.02	\$231,020.50	\$9,000	3,605
Grand Totals	176	168	\$452,279.59	\$269,683.35	\$11,400.00	4,498

In FY2010...

- In *Arizona Department of Economic Security v. Bussell et al.*, CLA successfully defeated an attempt by a longstanding debtor to discharge in bankruptcy over \$18,000 owed to ADES. The Department secured its first judgment against this debtor in 2001. However, collection efforts had been thwarted until CLA secured another judgment against the debtor and her new spouse in 2008.

The debtors, after their failure in bankruptcy court, began voluntary payments to the Department in June 2010.

- In *Robert Lundergan v. State of Arizona, Arizona Department of Economic Security, et al.*, CLA successfully defeated not one, but two motions filed by plaintiffs in the Federal District Court seeking extraordinary injunctive relief that would have

mandated ADES' Division of Developmental Disabilities to provide a consumer with about \$400,000 in annualized health care services.

- In *Arizona Association of Providers for Persons with Disabilities v. Mangum*, CLA defeated a special action brought by plaintiffs in the Arizona Court of Appeals seeking to reverse the Superior Court's ruling dismissing their "equal access" claim in a case

dealing with implementation of ADES cost-saving measures in relation to the FY2009 budget reduction.

- With the support of CLA attorneys and paralegals, PSS passed the Title IV-E Audit, which brings in approximately \$140 million in federal foster care funding. CLA will provide PSS attorneys with ongoing training to ensure that Arizona passes the next audit, which will be conducted in three years.

- CLA attorneys provided ADES with substantial advice and training on Fourth Amendment constitutional issues in the wake of the 9th Circuit Court of Appeals opinion issued in *Greene v. Camreta* that materially impacts the ability of CPS caseworkers to conduct interviews of children on school premises while investigating allegations of abuse or neglect under certain circumstances.



Chief Counsel Pam Culwell

Mission:

A dynamic team of legal professionals representing Arizona in many areas of civil law with dedication, integrity and innovation.

Division Summary

The Civil Division is comprised of seven sections that focus on specialty areas of civil law including natural resources; tax, bankruptcy and collections; liability management; employment; public health; public safety; transportation; contract review; procurement; licensing and enforcement; education, and complex case litigation.

Major Cases

• **United Effort Plan Trust:**

Continued litigating the administration of the United Effort Plan Trust, which owns most of the property in Colorado City, Ariz., in Utah state courts. The Trust has been under the district court's administration since 2005. The court found the prior trustees were in breach of their fiduciary duties, removed them and reformed the Trust.

We briefed and argued a case challenging the court's reformation, brought by members of the

Fundamentalist Church of Jesus Christ of Latter-Day Saints, in the Utah Supreme Court. In late 2009, we sought a court order granting discovery into the Trust's ownership of water rights and cooperation of local government officials, including law enforcement, with trust administration and disputes over rights to trust property. The court approved, and we expect substantial discovery will be completed before the end of the 2010 calendar year.

- **Abney v. State:** Successfully defended a class action lawsuit alleging the State and several employees improperly removed asbestos from a Department of Corrections facility in southern Arizona causing injury to inmates. The suit requested \$4 million. Following trial, the court granted the defendants' motion for judgment.
- **Lopez v. State:** Jury verdict for the State, finding no fault for injuries sustained by a bicycle rider. The jury found the City of Tempe at fault and awarded more than \$2 million.
- **Figuroa v. Arizona Department of Transportation:** Defense verdict in a wrongful death action in which the survivors of a 17-year-old driver alleged an overpass on I-19 south of Tucson was negligently designed and traf-

fic signals improperly programmed.

- **Mayer Unified School District v. Winkelman:** School districts sued the State alleging that rights of way granted by the Land Department prior to 1967, without financial compensation, violated the U.S. Supreme Court's ruling in *Lassen v. Arizona*. Following the Arizona Supreme Court's ruling in favor of the State, the U.S. Supreme Court denied the plaintiffs' petition for certiorari.
- **State v. Arizona Navigable Streams Adjudication Commission:** Successfully challenged the Arizona Navigable Streams Adjudication Commission's determination that the Lower Salt River is non-navigable. The Court of Appeals ruled the Commission misapplied the federal test for navigability.

Civil Division *(continued)*

- ***Vertes v. Maricopa County:*** Successfully protected the State's \$7.5 million investment in the Spur Cross Ranch Conservation Area by defeating the efforts of two private landowners to build a public roadway through the area so they could subdivide and sell real estate. The court held that a private citizen cannot condemn public land.
- ***State v. Inzunza and State v. Bartholic:*** Defeated two lawsuits raising constitutionality of sex offender registration laws. Bartholic argued the State's retroactive registration requirement violated the Fifth Amendment prohibition of double jeopardy, the Eighth Amendment prohibition of cruel and unusual punishment and the Fourteenth Amendment guarantee of due process. Inzunza also challenged retroactive registration, arguing it constituted a sentence beyond that imposed at the time of original sentencing.
- ***Craven et al. v. Horne, et al.:*** Defended the Legislature's funding plan for charter schools against an action, brought by parents and students, claiming the plan is unconstitutional. Litigation is ongoing.
- ***Hobday et al. v. Tom Horne, et al.:*** Defended the State's interests in a suit brought by Prescott Unified School District and Lake Havasu Unified School District. The suit argues that, in allowing school districts to bond and pass tax levy overrides, the State's education funding system violates the general and uniform and equal protection clauses. Litigation is ongoing.
- ***Level 3 Communications:*** Represented the Arizona Department of Revenue in resisting a taxpayer's refund claim based on obsolescence. The taxpayer argued that the State's valuation of its cable, conduit and switching equipment unlawfully overstated the property taxes owed because the equipment was obsolete. The Tax Court found the taxpayer failed to prove obsolescence, the Court of Appeals affirmed and the Supreme Court denied review. The ruling means that Arizona will not refund \$13.7 million.
- ***State v. TLAQ:*** This eminent domain action to acquire property for SR 179 initially involved an \$8 million difference of opinion for just compensation. The case settled for \$130,000 above the State's anticipated valuation, plus rental for a temporary construction easement.
- ***Barnes v. Arizona Department of Public Safety:*** Suit for false light invasion of privacy and unlawful interference with his anticipated appointment as Chief of Police in Williams, Ariz. DPS conducted a background investigation on Daniel Barnes as part of the law enforcement certification process, ultimately concluding he was "unacceptable" for the position. Barnes sued. The court granted summary judgment for DPS on all claims.
- ***Fuse v. Arizona Board of Regents:*** Plaintiff, a non-tenured lecturer at Arizona State University, brought suit alleging race discrimination and retaliation after ASU decided not to renew his contract. The court granted summary judgment for ASU on all claims.
- ***La Vie Nails v. Arizona State Board of Cosmetology:*** Administrative action enforcing the Board's rule on infection protection and safety standards requiring that all implements and tools coming into contact with a client during a pedicure be disinfected. The licensee performed pedicures using fish in the salon, and fish cannot be disinfected. The licensee stipulated to a consent agreement and later appealed to the Superior Court, which dismissed the appeal.

Budget Cases

- ***Arizona Association of Chiropractic, et al. v. Brewer, et al.***: Plaintiffs challenged the transfer of funds from various medical regulatory boards to the general fund. Defendants prevailed on their motion for summary judgment. Plaintiffs have appealed.
- ***Arizona Association of Providers for Persons with Disabilities, et al. v. State, et al.***: Plaintiffs challenged a reduction to the rates paid to service providers by the Department of Economic Security. Defendants successfully defended plaintiffs' request for a temporary restraining order and preliminary injunction. One of plaintiffs' primary legal claims was also dismissed. On special action, the Court of Appeals accepted jurisdiction and upheld the

Superior Court's dismissal. The Arizona Supreme Court denied plaintiffs' petition for review. Plaintiffs will likely file a petition for writ of certiorari with the U.S. Supreme Court.

- ***Arizona Farm Bureau Federation, et al., v. Brewer, et al.***: Plaintiffs challenged the transfer of funds from state agricultural boards to the general fund. The Superior Court granted plaintiffs' motion for summary judgment, and defendants appealed. The case has been briefed and is awaiting oral argument before the Court of Appeals.
- ***Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona, et al. v. Martin, et al.***: Plaintiff sought to prevent the transfer of money from the Industrial Commission's Special Fund in

the Administrative Fund to the State's general fund. The superior court granted plaintiff's motions for summary judgment.

- ***Arizona Property and Casualty Insurance Guaranty Fund, and Arizona Life and Disability Insurance Guaranty Fund v. State, et al.***: Plaintiffs challenged legislation directing the transfer of funds from the two guaranty funds to the State's general fund. The Superior Court entered a preliminary injunction preventing the transfers. The case is still in discovery, due in large part to discovery disputes that were ultimately resolved in favor of defendants. Dispositive motions are due in September.

- ***Central Arizona Water Conservation District v. Brewer, et al.***: Plaintiff challenges fund transfers from the Arizona Water Banking Fund to the State's general fund. Plaintiff initially filed a special action before the Arizona Supreme Court, which declined jurisdiction. Plaintiff then filed an application for special action and injunctive relief in the Superior Court. The court denied expedited consideration and the parties are conducting discovery. Dispositive motions are due in October.
- ***Land Title Association of Arizona v. State, et al.***: The Land Title Association of Arizona is challenging transfer of funds from the Arizona Escrow Recovery Fund to the State's general fund. This case is in an early stage; no discovery has been taken and no motions filed.

Liability Management

Claims served against the State in FY2010 totaled \$1.87 billion. Claims paid during that period totaled only \$4.68 million.

The Liability Management Section provides quality legal representation for the State of Arizona and its agencies, boards, department, commissions, and employees sued for claims, covered by the Arizona Department of Administration Risk Management Division, at a cost-effective alternative to private counsel. Statistical comparisons consistently show that cases assigned to Liability Management cost less, and are disposed of more quickly, than those assigned to private counsel. For example, in FY2010, the average hourly rate per tort lawsuit was \$102 for Liability Management and \$187 for private counsel.

Civil Division *(continued)*

Money Awards and Savings

A. Civil Penalties Awarded

1. Accountancy Board	\$171,232.00
1. Accountancy Board	\$1,500.00
2. Barber Board	\$2,750.00
3. Behavioral Health Examiners Board	\$500.00
4. Chiropractic Board	\$16,350.00
5. Cosmetology Board	\$40,750.00
6. Liquor Department	\$239,750.00
7. Nursing Board	\$55,400.00
8. Pest Management Office	\$2,000.00
9. Physical Therapy Board	\$8,750.00
10. Pharmacy Board	\$79,400.00
11. Registrar of Contractors	\$6,700.00
12. Technical Registration Board	\$14,000.00
13. Veterinary Medical Examiners Board	\$2,000.00
14. Weights and Measures Department	\$4,600.00
15. Department of Health Services	\$670,000.00
Total	\$1,141,700.00

B. Cost Recovery Awards

1. Accountancy Board	\$29,185.00
2. Cosmetology Board	\$53,435.00
Total	\$82,620.00

C. Restitution for Victims Awarded

1. Cosmetology Board	\$850.00
2. Dental Board	\$102,734.00
Total	\$102,584.00

D. Savings to Client Agencies

1. Appraisal Board	\$30,000.00	(Superior court's award of attorneys fees reverse on appeal)
2. Department of Racing	\$55,000.00	(Court awarded cost of investigation.)
3. Registrar of Contractors	\$237,924.94	(Difference between amounts sought by Recovery Fund claimants in administrative and civil actions and amounts awarded.)

E. Savings in ADOT Eminent Domain and Contract Cases \$23,064,124.00

(Difference between amount of settlements and verdicts paid and amounts demanded as just compensation and damages.)



Chief Counsel Melanie Pate

Mission:

To enforce civil rights laws and eliminate discrimination statewide by increasing public awareness of civil rights issues. These goals are reached through investigation, enforcement, education and the provision of services to victims, including dispute resolution services. The Division continues to focus on outreach and education involving vulnerable populations.

Division Summary

The Civil Rights Division (CRD) enforces the Arizona Civil Rights Act, which prohibits discrimination in employment, voting, public accommodations and housing, by investigating, mediating and litigating civil rights complaints.

The Division provides conflict resolution services and mediation programs statewide. It not only responds to complaints, but seeks to reduce discriminatory conduct through education and outreach in the community.

CRD is comprised of two sections: Compliance and Litigation. The Compliance Section screens and investigates complaints involving civil rights violations and provides education and outreach to the public.

The Litigation Section is responsible for litigation in state and federal courts involving civil rights violations and provides legal resources for drafting legislation, education and outreach.

The Conflict Resolution Program, a component of the Litigation Section, provides services statewide, including mediation, facilitation, conciliation and training. The mediation programs encompass civil rights, truancy and victim-offender issues.

Division Highlights

Historic Ninth Circuit Victory

On April 30, 2010 the Ninth Circuit Court of Appeals reversed the U.S. District Court's dismissal of *State v. Harkins Amusement Enterprises, Inc.*, a lawsuit in which the State sought the installation of equipment to display captions and audio descriptions for people with sensory disabilities. It was a groundbreaking legal decision because it marked the first time that a Circuit Court of Appeals has ruled on whether the Americans with Disabilities Act requires captions or descriptions in movie theaters.

In 2006, the Civil Rights Division filed a lawsuit against Harkins Theaters on behalf of Arizonans with sensory disabilities. The U.S. District Court dismissed the suit in 2008, concluding that the Americans with Disabilities Act (ADA) and the Arizonans with Disabilities Act (AzDA) do not require movie theaters to provide

captions and descriptions.

The Division appealed that decision to the Ninth Circuit, which ruled that closed captions and descriptions are auxiliary aids and services included under Title III of the ADA.

Captioning provides the text of the soundtrack of a movie for people who are deaf or hard of hearing. Audio descriptions provide information about key visual aspects of a movie through descriptions of scenery, facial expressions, costumes, action, and scene changes during pauses in dialogue.

The Civil Rights Division received support from many disability and civil rights organizations who filed briefs with the Ninth Circuit, including the U.S. Department of Justice, the Screen Actors Guild, The National Association of the Deaf, the American Council of the Blind and the National Disability Rights Network.

Civil Rights Division *(continued)*

- The Compliance Section investigated 1521 discrimination charges and resolved 957 cases, including 157 housing charges, 730 employment charges and 70 public accommodations charges.
- The Compliance Section issued 20 determinations in cases where the Division found reasonable cause to believe that unlawful discrimination had occurred. Many of these cases were successfully conciliated before litigation became necessary.
- The Litigation Section resolved 103 charges of discrimination either through mediation, conciliation or litigation and performed work on hundreds of other charges filed with the Division. As a result of these efforts, the Litigation Section obtained a total of more than \$838,000 in monetary relief for charging

parties and for future monitoring and enforcement activities, along with a wide variety of injunctive relief to prevent future civil rights violations.

- The Division's Conflict Resolution Program mediated 113 civil rights matters and facilitated 70 agreements, which is a 62 percent settlement rate. As a result of the Conflict Resolution Program's efforts, charging parties received more than \$351,600 in monetary relief and also obtained significant injunctive relief to assist the parties in finding common ground in resolving charges of discrimination filed with the Division.

Among the agreements facilitated by the Conflict Resolution Program:

- In an employment matter involving disability discrimi-



Attorney General Terry Goddard holds a torch and helps lead the annual Martin Luther King Day March in downtown Phoenix.

nation, the employer agreed to pay the charging party \$44,000.

- To resolve a charge of employment discrimination involving disability and national origin discrimination, the respondent agreed to pay the charging party \$40,000.

- In an employment matter involving allegations of sex discrimination and retaliation, the respondent agreed to pay the charging party \$35,000.

- To settle a charge involving alleged violations of the Arizona Fair Housing Act, the respondent agreed to allow the charging party to keep

her service animal without unnecessary restrictions.

In addition to their civil rights mediations, the Conflict Resolution Program trains volunteers to serve as mediators in various Superior Court Alternative Dispute Resolution programs and coordinates mediations for various courts in the State.

The Litigation Section also helped parties resolve 24 charges through conciliation agreements achieved prior to the conclusion of the Division's administrative investigation or after a reasonable cause determination was issued but before a lawsuit was filed. Through these conciliation efforts, the Division obtained more than \$227,000 in monetary relief for the charging parties and for future monitoring and enforcement activities.

The conciliation agreements also resulted in substantial non-monetary relief for disabled persons in the form of physical changes to places of public accommodations, such as the building of access ramps and retrofitting places of public accommodation to ensure disabled persons could access the businesses and their services, and requiring policy revisions

and training to prevent future civil rights violations in housing and employment.

One pre-lawsuit conciliation agreement involved a complaint against a national grocery retailer alleging that its payment policy for home delivery service did not accommodate customers with disabilities.

The grocery retailer agreed to make changes to the payment procedure to allow it to take payments from people with disabilities who receive SNAP benefits.

In seeking to enforce housing, employment and public accommodations discrimination laws throughout Arizona, the Litigation Section pursued 23 lawsuits in state and federal trial and appellate courts alleging violations of the Arizona Civil Rights Act, which includes

the Arizona Fair Housing Act and the Arizonans with Disabilities Act. Among the highlights of the cases litigated in the past year:

- ***State v. Hildale-Colorado City Utilities, et al.***: On June 25, 2010, the Division filed a lawsuit against the Town of Colorado City, Ariz.; the City of Hildale, Utah; Hildale-Colorado City Utilities; Twin City Water Authority, and Twin City Power for alleged violations of the Arizona Fair Housing Act. The complaint alleges that the defendants discriminated against Colorado City resident Ronald Cooke by not providing him with water and other utility services because of his religion and by not accommodating his disability. Mr. Cooke is a former member of the Fundamentalist Church of Jesus Christ of Latter Day Saints ("FLDS").

- ***State v. FGPJ Apartments, et al.***: This housing discrimination case involved a Tucson landlord who allegedly discriminated against a disabled tenant by failing to provide an accessible parking space and make necessary repairs to his apartment so that he could operate his medical equipment. The landlord also allegedly retaliated against the tenant and his family by threatening to evict them after they filed a complaint with the Division. The lawsuit was resolved through a settlement agreement that required the landlord to pay \$100,000 to the tenants and \$50,000 to the Division for future civil rights enforcement and monitoring activities. The settlement is one of the largest the Division has entered into in a housing discrimination case.

- ***State v. ASARCO, LLC***: This sex-based employment discrimination case, which includes claims for disparate treatment, hostile work environment, sexual harassment, retaliation and constructive discharge, involves allegations that ASARCO has a history of ignoring complaints of workplace harassment and failing to address employees' use of pornographic graffiti to humiliate, demean and ostracize co-workers, including the aggrieved party in this lawsuit. Defendants have vigorously defended the action and the case is likely to go to trial in early 2011.

- ***State v. City of Cottonwood & Cottonwood Police Department***: This employment discrimination case involves allegations that the Cottonwood Police Department made passing a physical

fitness test known to have a disparate impact on women a requirement to promote to sergeant in order to prevent the only woman ever to have otherwise qualified from attaining that position. The case includes claims for disparate impact as well as disparate treatment discrimination relating to defendants' implementation of the physical fitness test. As such, the case has implications for female police officers other than the charging party.

- ***State v. Dupnik, et al.***: The Division filed a lawsuit against Pima County Sheriff Clarence Dupnik, Pima County and the Pima County Sheriff's Department for alleged disability discrimination and retaliation against a former employee. The employee was a 9-1-1

call taker who requested to use her certified service dog at work as a reasonable accommodation for her mobility disability. The defendants refused to grant her request and retaliated against her for engaging in protected conduct.

- ***State v. Frito-Lay, Inc. and Frito-Lay North America***: This case of sex- and race-based employment discrimination involves allegations that the defendants harassed and discriminated against a Caucasian female employee after she was promoted to a position generally occupied by Hispanic males, and then threatened her with termination and demoted her after she was injured in an industrial accident attributable to the defendants' safety violations.

- ***State v. La Paloma***: This employment lawsuit involves an employer that owns and operates group homes serving adolescents with mental health diagnoses. The Division alleges that the employer failed to hire an otherwise qualified applicant as a behavioral health technician because she is deaf. The Division also alleges that the employer failed to engage in the interactive process or consider available reasonable accommodations that would have enabled the applicant to perform the essential functions of the position.

- ***State v. CEO Foods d/b/a eegee's***: The Division settled a claim against this Tucson employer that owns and operates a chain of fast-food restaurants. The lawsuit al-

leged that a manager sexually harassed an employee on more than one occasion and when the employee complained of the treatment, the employer retaliated against her by reducing her work hours, asking her to transfer to a location farther from her home and treating her less favorably than other employees. The settlement agreement required the defendant to provide fair monetary relief to the employee, adopt new sexual harassment policies and procedures, expand its training program, and appoint a trained employee to be responsible for receiving and investigating employees' harassment allegations.

- ***State v. Unique Hair Artistry, et al.***: The Division filed a lawsuit against this employer for alleged sexual harassment of a female employee.

The employer had less than 15 employees when the harassment occurred, so the Division had jurisdiction under the Arizona Civil Rights Act to investigate the complaint (whereas the EEOC did not have jurisdiction under federal law.) The parties entered into a consent judgment that required the defendant to pay \$15,000 to the employee.



Solicitor General
Mary O'Grady

Mission Statement:

The Solicitor General's Office provides leadership in appeals, election law, ethics, independent advice, legal opinions, public access laws, and continuing legal education. It is committed to excellence, fairness and integrity.

Solicitor General's Office

The Solicitor General's Office is responsible for:

- *Ensuring the quality of the Attorney General Office's appellate practice;*
- *Overseeing the preparation and publication of official Attorney General Opinions;*
- *Representing the Clean Elections Commission and Secretary of State on election law issue and handling civil election law and campaign finance enforcements;*
- *Providing independent advice to State government agencies and boards in administrative proceedings in which Assistant Attorney Generals serve as advocates;*
- *Reviewing constitutional challenges to Arizona state laws and representing the State in selected cases;*
- *Coordinating the Attorney General Office's continuing legal education (CLE) program;*
- *Providing advice to all attorneys of the AG's Office involving ethics issues;*
- *Coordinating the work of the Open Meeting Law Enforcement Team and the Public Records Task Force.*

Major Accomplishments in Fiscal Year 2010

Significant Amicus Briefs

The Arizona Attorney General frequently joins with other Attorneys General to file amicus briefs in cases pending before the U. S. Supreme Court on issues of importance to the states. During fiscal year 2010, Arizona and Montana took the lead on preparing a state amicus brief in *Citizens United v. FEC*, a landmark campaign finance case concerning limits corporate campaign contributions. The multi-state brief supported the constitutionality of state laws that limited direct independent expenditures by corporations and labor unions. Arizona joined many other amicus briefs in civil and criminal cases, including briefs supporting Second Amendment rights and supporting liability for people who protest at the

funerals of fallen soldiers.

The Attorney General's Office may also file amicus briefs in state court actions on issues of concern to the State. In the past year, for example, the State filed an amicus brief before the Arizona Supreme Court addressing the application of Arizona's public records laws to metadata.

Defending Arizona's Election Laws

In fiscal 2010, attorneys from the Solicitor General's Office continued to represent the State in lawsuits challenging the constitutionality of Arizona's election laws.

• Identification at the Polls and Proof of Citizenship.

Since 2006, lawyers from the Solicitor General's Office have been defending the State's requirements regarding identification at the polls

and proof of citizenship when registering to vote. These requirements were part of the Proposition 200 citizens' initiative approved in 2004. In fiscal 2008, the State prevailed in the federal district court. In fiscal year 2010, attorneys argued the appeal of that decision before the Ninth Circuit and await the decision in that case.

- **Disenfranchisement of Convicted Felons.**

Two years ago, the district court upheld the constitutionality of our laws pertaining to the disenfranchisement of convicted felons. In fiscal 2010, the appeal of the trial court's decision was argued before the Ninth Circuit, and, in an opinion authored by Justice Sandra Day O'Connor, a unanimous panel affirmed the district court's decision.

- **Arizona's Clean Elections Act.**

Attorneys from the Solicitor General's Office also continued their defense of the matching funds provision of the Arizona Clean Elections Act. Last year, the district court held that the matching funds violated the requirements of the First Amendment, but the Ninth Circuit reversed this decision. A petition for certiorari to the U.S. Supreme Court is anticipated in this case.

- **Laws Governing Local Elections.**

In its 2009 session, the Arizona Legislature approved a bill requiring city and town elections to be non-partisan and limiting the use of at-large elections. The City of Tucson challenged this legislation as an invalid infringement on its rights as a charter city. The trial court rejected the constitutional

challenge, and that case is currently on appeal.

Representing the State in School Choice Litigation

The Solicitor General's Office continued its work on *Winn v. Garriott*, a challenge to the State's tuition tax credit law. The State successfully petitioned for certiorari from a Ninth Circuit decision that reversed the district court's dismissal of the Establishment Clause challenge to the State's tuition tax credit law. The Supreme Court will decide the case in its term that begins in October 2010.

Defending Arizona's Regulation of Wine Sales

The Solicitor General's Office and the Licensing and Enforcement Section collaborated to successfully defend the constitutionality of Arizona's laws regulating the sale of wine

against a commerce clause challenge. The district court and the Ninth Circuit affirmed the constitutionality of Arizona's laws.

Improving Tribal-State Agreements

SGO continued its work with lawyers from throughout the Office to address recurring issues in tribal-state agreements. Most of this effort in the past year focused on working with lawyers from the Navajo Nation Department of Justice to develop standard language for contract provisions. This project is near completion.

Significant Achievements

Appellate Practice. The Solicitor General's Office continued its work preparing, reviewing, and editing briefs for state and federal appellate courts and coordinating oral argument preparation. In fiscal 2010, the

SGO reviewed more than 286 briefs and coordinated more than 30 moot courts.

Election-Year Work. Because the SGO handles the State's legal work concerning elections and campaign finance, each election year brings an increased workload. The 2010 election year began with intense litigation from the district court to the U.S. Supreme Court concerning the constitutionality of the matching funds component of the Clean Elections system. Ultimately, the Ninth Circuit affirmed the constitutionality of the Clean Elections program, but the Supreme Court enjoined matching funds, pending its review of a petition for certiorari in the case. There was also litigation with the Green Party in federal district court concerning the constitutionality of certain aspects of Arizona's

process by which new parties gain representation on Arizona's ballot. In addition, SGO lawyers represented the Secretary of State in 17 nomination petition challenges that determined whether candidates qualified to be on the 2010 ballot. SGO has also received more than two dozen referrals from the Secretary of State for enforcement of campaign finance laws and submitted more than 40 changes to elections law to the U.S. Department of Justice for preclearance, including an extensive update of the Secretary of State Elections Procedures Manual.

Budget-Related Litigation.

The economic downturn led to lawsuits challenging various aspects of the State's budget. The SGO represented the State in special actions before the

Arizona Supreme Court challenging several elements of the State budget and worked with lawyers from the Education and Health Section on litigation related to the budget for K-12 education. SGO lawyers also assisted lawyers from other divisions handling budget-related cases that were pending in trial and appellate courts.

Litigation Concerning Abortion Legislation.

In the 2009 session, the Legislature passed a bill making a number of changes to Arizona's laws concerning abortions. The legislation was challenged in lawsuits filed in state and federal court. The State court granted a preliminary injunction preventing enforcement of major pieces of that legislation while the lawsuit is pending. That decision is presently on appeal. In contrast, the federal court refused to enter a preliminary injunction

preventing implementation of the new law. The federal district court challenge was subsequently dismissed.

Attorney General Opinions.

The Solicitor General's Office coordinates production of the Attorney General's opinions. In fiscal year 2010, the Attorney General's Office received 48 opinion requests and requests to review opinions from lawyers for school districts. The Office issued opinions concerning, for example, the allocation of interest income on trust accounts to the Arizona Foundation for Legal Services & Education, the requirements for vendor contracts for the state's photo-enforcement system, and requirements for reporting applicants for public benefits who are not lawfully present in the United States.

Continuing Legal Education.

The Solicitor General's Office, together with the Office's Continuing Legal Education Committee, offers continuing legal education programs to ensure that lawyers have relevant educational opportunities that will fulfill the State Bar's continuing legal education requirement. In fiscal 2010, the Office offered 29 continuing legal education programs for a total of 68 CLE hours. The programs covered issues such as legal ethics, electronic filing, recent rule changes, legislative history research and notice of claim requirements. In conjunction with the National Association of Attorneys General, the Office offered an intensive trial practice program for attorneys that offered practical experience in all aspects of trying a case.

Open Meeting Law Enforcement.

In collaboration with lawyers from throughout the Office who serve on the Open Meeting Law Enforcement Team ("OMLET"), SGO assisted with the processing of more than 60 open meeting law complaints. These complaints involved public entities from throughout the State. If a violation is found, the remedies typically involve training, monitoring, and discussions of the allegations and the results of the investigation at a public meeting. Serious violations may result in civil penalties and removal from office. OMLET lawyers also participate in training programs that educate the public and public officials on open meeting law requirements.



Chief Counsel Mark Wilson

Mission:

The Finance Division supports the Attorney General's Office with a multidisciplinary team of information services, financial and legal professionals. We provide legal advice, litigation, budgetary, contract, accounting and financial control services to the Office and to the Executive and Judicial Branches of State Government.

Division Summary

The Finance Division is comprised of four Sections: the Administrative Law Section, Bankruptcy and Collection Enforcement Section, the Financial Services Section and the Information Services Sections.

The **Administrative Law Section (ALS)** is comprised of lawyers and legal support teams. ALS represents approximately 60 State agencies in matters concerning public monies, procurement, finance, open meetings, public records, general agency advice and any related litigation. Clients include the Judiciary (and its associated programs), Secretary of State, Department of Administration, Department of Commerce, Department of Corrections, Department of Emergency and Military Affairs, Department of Homeland

Security, Department of Housing, Department of Gaming, Government Information and Technology Agency, Arizona Exposition and State Fair, State Retirement and the State Lottery, to name a few.

Because of the number of clients, ALS deals with a wide range of legal issues. ALS' 60-plus agencies are represented by 12 Assistant Attorneys General. These lawyers are the State's experts on public monies, procurement, contracting and financial issues. ALS' responsibilities include negotiating multi-million dollar contracts, assisting in

State bonding issues, providing procurement advice, and assisting agencies with licensing and certification issues. Other tasks include prosecuting enforcement actions and defending claims or actions against the agencies. ALS' successes are measured in its partnerships with the client agencies and the assistance it provides them in performing their statutory missions in a creative and cost-effective manner and its ability to deal effectively with litigation matters when they arise.

The **Bankruptcy and Collection Enforcement Section (BCE)** is comprised of lawyers, collectors and legal support teams. BCE represents virtually all state agencies in debt-related matters. In FY2010, BCE collected \$12.4 million that state agencies had been unable to obtain. BCE's debt collection responsibilities range from routine collection and bankruptcy matters to complex litigation to establish debt. For example, in FY10, BCE collected over \$3.5 million dollars on behalf of the Department of Transportation in the Flying J bankruptcy case.

Significant Organizational Change in the Office

The creation of the Finance Division marked the first major organizational change in the Attorney General's Office in the last decade. In FY07, ALS and FSS were moved from other Divisions into the newly created Finance Division. In FY08, ISS was moved into the Division, and in FY09, BCE came aboard. The Division strives to bring the legal and business sides of the Office together to improve the work product of both. By working together as a Division, ALS is better able to observe the effect and consequences of legal advice it may give, thus helping the Section tailor its advice to better serve the business needs of the State.

The **Financial Services**

Section (FSS) is responsible for the financial operational services of the Attorney General's Office and is comprised of accounting, procurement and financial management professionals. FSS strives to assure work is being performed in a "private business" appropriate model. During the year, FSS helped redefine roles and responsibilities for all positions to maximize available resources, implemented technological solutions to enhance operations and data integrity, reviewed multiple processes and implemented improved methods to improve efficiency and response times. The section also developed reports to bolster financial management and resource allocation,

provided divisions with timely financial information to improve decision-making and reduced administrative costs.

The **Information Services**

Section (ISS) is comprised of computer engineers, software professionals, trainers and "help desk" professionals. ISS has improved its systems and processes so that it now performs the same services provided in FY07 with 30 percent fewer FTEs. ISS is responsible for overseeing and operating the information technology services of the Office. ISS has been responsible for implementation of the Office's new debt collection system. This new system is expected to provide better management and insight into the Office's debt collection activities and result in increased revenue to the State.

Employee Services Division



Division Director
Susan Schmaltz

Mission:

To provide customer-centered, quality administrative services in a proactive, responsive, and cost-effective manner that supports the overall mission of the Attorney General's Office. We continually strive to improve our services, value and customer satisfaction.

The former Administrative Operations Division has been reorganized. A portion of the former division was moved to Finance and the remaining sections were renamed the Employee Services Division. Over the past 24 months, the Employee Services Division has been transformed into an energized, performance-oriented staff focused on providing professional administrative services to the Office.

Division Summary

The Employee Services Division (ESD) consists of the Human Resources (HRS) and Facilities Management and Planning (FMP) Sections. The Division provides the internal support and administrative services needed to effectively carry out the Office's mission.

Human Resources Section

The Human Resources Section (HRS) oversees all activities necessary to develop, support and shape the future of the Office's workforce – from recruitment through retirement. Four work areas drive our activities:

- **Strategic workforce planning:** Our focus is on attracting, developing, motivating and

retaining a diverse and well-qualified workforce within a supportive work environment.

- **Skilled consultation:** We work throughout the Office in the areas of research and personnel policy development, employee relations, performance management and benefit program implementation.

- **Organizational development:** We provide training opportunities to equip Office employees with the shared values, commitment to mission, knowledge and skills needed to accomplish extraordinary tasks in service to our State.
- **Loss Prevention Program oversight:** We ensure Office compliance, including EEO agency plan implementation, ADA program development, employee grievance process oversight and agency-wide health and safety services.

Facilities Management and Planning Section:

The Facilities Management and Planning Section (FMP) manages the day-to-day operations and maintenance of the agency's buildings and office spaces. Primary areas of focus are:

- **Daily operations:** We coordinate the maintenance, tenant

improvement and telecommunications service requests across the Office as well as consult with division management on space planning.

- **Safety and security:** Our program development and system oversight includes physical security system operations and employee awareness campaigns designed to maximize personnel safety and security.
- **Central services:** We coordinate shuttle transportation, mail room operation, receptionist and copy center services that support Office needs.
- **Continuation of Operations Planning ("COOP"):** We develop plans and procedures to ensure that the Office can continue to perform essential functions in the event of an emergency.

Employee Services Division *(continued)*

Division Highlights:

HRS:

- Assisted the Divisions in implementing the 2010 budget reduction bill, which resulted in an Office-wide implementation of a 2010 Reduction-in-Force (RIF), an involuntary furlough and a voluntary furlough program. Provided outreach placement services for affected employees and training support for supervisors to minimize the impact of the RIF.
- Established and implemented diversity and cultural competency program initiatives across the Office, including the creation of the *Accessibility and Accommodation Guidebook*.
- Executed a series of internal audits to ensure Office personnel practices complied with applicable Arizona Department of Administrative rules and state and federal laws.
- Conducted a thorough review of the Office badge access system and corrected deficiencies resulting in improved safety and security of all personnel and physical assets.
- Implemented health initiatives such as both annual and pandemic flu shots, CPR/AED trainings, and the on-site mobile mammography program.
- Coordinated the agency *Travel Reduction Survey* resulting in a 92% completion rate.
- Administered the *State Employees Charitable Campaign* for the Office. The Office exceeded the internal goal for dollars and participation.
- Developed and implemented training in the areas of ADA, Ethics, Confidentiality and Conducting Performance Appraisals to ensure compliance with

applicable state, federal and agency regulations.

- Reviewed over 10,000 resumes, recruited and hired 27 attorneys and 47 non-attorneys in “mission critical” positions.
- Coordinated the Office Blood Drive Campaign. The Office received high recognition with a “Bronze Award” for 20 percent participation in blood drives conducted throughout the year.
- Implemented a *Pandemic Flu Planning and Awareness* campaign which minimized the Office’s risk and improved employee health and safety. One positive campaign result: 350 employees received on-site flu shots and 146 employees received H1N1 shots, reducing the risk of illness to employees across the agency.

FMP:

- Centralized the receptionist services in the Capital Center building, improving efficiency, security and services with limited resources.
- Audited the Agency COOP program, identifying opportunities for improvement of services and recovery response.
- As part of the Loss Prevention Program, conducted a thorough review of emergency systems and worked to correct deficiencies. Work included fire safety inspections, review of building access procedures and development of a *Violence in the Workplace Prevention Program*.
- Developed written procedures and cross-trained FMP staff on procedures, improving the consistency and efficiency of services to AGO employees.
- Coordinated loss prevention issues with ADOA Risk management, such as fire and safety inspections, ergonomic evaluations and Worker Compensation reports.
- Provided a valuable service with the AG shuttle, transporting attorneys, staff and documents to the courts and other agencies in the Capitol Mall area. During the year, the shuttle carried 7,738 passengers and logged 14,170 miles. The shuttle saved valuable attorney time and reduced agency spending on reimbursed mileage and parking.
- Processed 659 work orders with ADOA Facilities Operations and Maintenance to repair, maintain and improve working conditions in the state buildings occupied by the AGO.
- Managed 473 telecommunication service requests during the fiscal year.
- Processed some 164,500 pieces of mail through the Law Building mailroom.