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## ***OFFICE OF ATTORNEY GENERAL TOM HORNE***

### **ANNUAL REPORT FY 2013**

#### **Executive Summary**

*Editors Note: The following is a summary of the FY 2013 accomplishments of the Arizona Attorney General's Office. Full reports from divisions and sections are available in the attached appendices. Appendix references are contained in this summary under **Section and Unit headings in bold.***

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Taking action against violent criminal drug cartels operating in and around Arizona, implementing the historic National Mortgage Settlement, growing resources to continue the ongoing battle to protect consumers against criminal predators, and arguing in the U.S. Supreme Court to defend the sanctity of the voter registration process are among the many significant accomplishments under Attorney General Tom Horne in Fiscal Year 2013.

Horne continued his determined pace in his third year as Attorney General as he personally argued cases in court, most notably two in the United States Supreme Court. In the first, he persuaded the Court to unanimously overrule the Ninth Circuit in a case which had the important effect of limiting federal Court interference with state Courts enforcing judgments. In March, he personally argued in favor of voter approved Proposition 200, which provides that those registering to vote should offer evidence of citizenship. While the Court recognized that a federal act prevents that, the Court also ruled that:

***“Arizona is correct that it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualification.”***

The Court stated that Arizona could make a request of a federal agency or a state specific requirement, and if that was denied, Arizona could proceed with its constitutional argument in Federal Court. That Federal case is now pending, and, based on the above quoted language by the United States Supreme Court; it is probable that the Courts will ultimately approve Arizona’s right to require evidence of proof of citizenship from those registering to vote.

A video on this subject may be viewed here: [http://www.youtube.com/watch?v=Laf2dIF9r\\_s](http://www.youtube.com/watch?v=Laf2dIF9r_s)

FY 2013 proved to be a very active period for Horne and his staff as legal action was taken on a number of fronts related to election law.

In addition to the above-mentioned case, in *Shelby County v. Holder*, Horne submitted the lead Friend of Court brief, joined in by a number of other states, supporting the Alabama position that Sections 4(b) and (5) of the Voting Rights Act are unconstitutional. The Supreme Court agreed with Alabama and Arizona and eliminated the preclearance requirements that had been a significant burden on Arizona, which had been required to get Federal Justice Department approval before any law effecting voting, no matter how indirectly, could take effect.

*These accomplishments were overseen under the auspices of the Solicitor General’s Office. Added information about the activities of this Office including: Appellate Brief Review Statistics, United States Supreme Court Practice, Ninth Circuit Court of Appeals Practice, Arizona Appellate Court Practice, Ensuring Fair Elections and an Informed Public, Other Election Matters, Identification at the Polls and Proof of Citizenship, Preclearance Under the Voting Rights Act, Campaign Finance Enforcement, Lobbying Enforcement, Arizona’s Clean Elections Act, Defending Arizona’s Statutes, Initiative Challenges, Redistricting Litigation, Nominating Petitions Litigation, Appellate Practice, Attorney General Opinions, AGO Library and Research Services (LRS), Continuing Legal Education, Ethics, NAGTRI Involvement, Open Meeting Law Enforcement team (OMLET), Independent Advice, may be found in Appendix A*

Attorney General Horne is a staunch proponent of ensuring the fair application of the death sentence for especially brutal murders. Mr. Horne believes that the average delay of 18 years between the imposition of a capital sentence and its being carried out is scandalous, especially because of the emotional toll taken on the families of victims.

Despite having far fewer available resources than the defense side, the Capital Litigation Section does remarkable work in this area. In FY 13, more than 900 legal documents were filed by staff in this section to uphold the convictions and sentences of criminal defendants.

*A complete review of the work of the **Capital Litigation Section, including: Criminal Appeals, Litigation, Executions, Cases Affirmed by the Ninth Circuit Court of Appeals, and Cases Affirmed on Direct Appeal by the AZ Supreme Court, will be found in Appendix A.***

Attorney General Horne had reprioritized the budget upon taking office, to put more resources into dismantling drug cartels. In cooperation with federal and state law enforcement, at least 10 drug smuggling operations have been dismantled.

FY2013 also saw continued pursuit by the AGO of criminals and criminal enterprises that defrauded Arizonans through Ponzi schemes, embezzlement and loan modification fraud.

Some of the more noteworthy actions undertaken by the Criminal Division in FY2013 include:

- “Operation Falkor” – A 13 month long wire interception investigation of a Mexico based DTO involved in the narcotics. The operation netted the arrest of 45 suspects and the seizure of 175 lbs. of meth, 33 lbs. of Cocaine, 10 oz. of heroin and \$2.6 million in drug proceeds.
- “Operation Crystal Lake” – A 7 month long wire interception investigation of a drug trafficking organization. During the investigation, 125 lbs. of meth, 90 lbs. of cocaine, 1.5 lbs. of heroin and 225 lbs. of hashish, as well as 1.7 million in drug proceeds were seized. In addition, 30 suspects were arrested and charged.
- The Tucson Criminal Section (TCS) obtained convictions against a 12 year veteran of the Department of Public Safety and his wife on money laundering and theft charges relating to the embezzlement of over \$175,000 from his wife’s employer. The defendants face a mandatory sentence of between 4.5 to 23 years on multiple felony counts.
- The AGO successfully broke up a Ponzi scheme that promised high yields on the repair and refurbishment of airplanes. It was determined that the fraudster took no action on the airplanes and was using new investments to pay off early investors. The state obtained judgment and the perpetrator was ordered to pay almost \$10 million in restitution.
- In an action against illegal gaming, the AGO disrupted an internet café where not only was illegal online gambling occurring, but commercially manufactured gaming devices with similar to a “crane” game were in place designed specifically for the player to lose the first 1,200 to 2,000 plays. The AGO assisted in seizing the assets of the café and is considering the viability of going after the manufacturers of the gaming devices. This is the first known action against this type of scheme.

*For additional details regarding actions taken by the **Criminal Division, including a description of the Southwest Border Anti-Money Laundering Alliance, a summary of cartel and drug related actions taken by the Tucson Criminal Section (TCS), joint wire investigations undertaken by the Drug & Racketeering Enforcement Section (DRG), cases involving financial and consumer fraud overseen by both the Financial Remedies Section (FRS) and the Fraud & Special Prosecution Section (FSP), as well as summaries of Health Care Fraud & Abuse Section (HCFA), the Office of Victims Services (OVS), and the Special Investigations Section (SIS), please go to Appendix B found at the end of this document.***

Criminal predators are also on the radar of Attorney General Horne’s Consumer Protection and Advocacy Section. As noted in the FY 12 Annual Report, this division did outstanding work to complete the

negotiations for the National Mortgage Settlement. This settlement brought to Arizona \$2 billion which helped keep people in their homes, helped stabilize the real estate market, and provided a needed boost to the Arizona economy. Among the highlights:

- In FY 13, the Attorney General worked diligently to implement this settlement. Among the highlights: As of May, 2013, the banks have reported providing a gross total of \$1.833 billion in consumer relief for Arizona borrowers; \$627.8 million was in the form of first and second lien principal reduction with an additional \$223 million in the pipeline for borrowers in trial payment plans.
- Almost 65,000 Arizonans who had their primary residence foreclosed upon received payments totaling \$96.5 million.
- The Attorney General's Office is also administering a \$57 million program to provide relief to Arizona homeowners using funds from the settlement.
- As a result of a separate settlement with Bank of America, severely distressed borrowers received an additional \$7.89 million in relief from that bank.

For more details about Attorney General Horne's work to bring mortgage relief to Arizonans, please view this video: <http://www.youtube.com/watch?v=BK0bcn0snMU>

This division also enhanced its work to protect Arizona consumers from various predatory schemes, and utilized sting operations to identify and penalize unscrupulous business and service providers. Also, the division took the lead in implementing improvements to the landmark Tobacco Master Settlement Agreement and continued the valuable work of the Task Force Against Senior Abuse, an initiative started by Attorney General Horne shortly after taking office in 2011.

*Learn more about the activities of the Consumer Protection and Advocacy Section, including: CONSUMER LITIGATION UNIT, Implementing the National Mortgage Settlement, Bank of America settlement, Protecting Consumers from Mortgage Fraud and Loan Modification Scams, Business Opportunity Fraud, Telemarketing, and Do Not Call Violations, Auto Cases - Undercover Operations, Judgment Enforcement and Safety Actions, Pharmaceutical Matters, Privacy Matters, General Consumer Fraud Matters, Task Force Against Senior Abuse, CONSUMER INFORMATION AND COMPLAINTS UNIT, Consumer Complaints, AGENCY UNIT, Department of Financial Institutions, Department of Real Estate, Department of Insurance, Department of Agriculture, Game and Fish Commission & Department of Game and Fish, TOBACCO ENFORCEMENT UNIT, Multi-year Settlement of MSA Payment Disputes, Enforcement of the Escrow and Directory Statutes, New Law Regulating RYO Machines and Enhancing Tobacco Laws, New Law Prohibiting the Sale of E-Cigarettes to Minors, Enforcing the Public Health Provisions of the MSA through the Youth Tobacco Program, Youth Tobacco Program, ANTITRUST UNIT, E-Books Litigation, Ensuring Schools Comply with Public Finance Laws, MONIES RECOVERED FOR THE STATE AND CITIZENS OF ARIZONA, in Appendix 1 of Appendix C.*

The Civil Rights Compliance and Civil Rights Litigation Sections are an important function of the Attorney General's mission. These sections mediated 113 civil rights matters and facilitated 62 agreements, which is a 55% settlement rate, and also helped parties resolve 19 charges through conciliation agreements.

*For more details on the work done in FY 13 by the Civil Rights Compliance and Civil Rights Litigation Sections, including: Civil Rights Conflict Resolution Program, Civil Rights Litigation Section, Civil Rights Outreach Activities please refer to Appendix 2 of Appendix C.*

Attorney General Tom Horne has fought hard against federal government overreach into the affairs of the 50 states and FY 13 was no exception. In FY 13 Horne joined other states in taking action against the U.S. Environmental Protection Agency (EPA) in its efforts to impose an invisible visibility standard on several Arizona coal-fired power plants.

This legal action will continue into FY 14 and is led by the AG's **Environmental Enforcement Section**.

A video explaining the importance of this fight against the EPA can be viewed here: <http://www.youtube.com/watch?v=6muZra-LVig> and here:

<http://www.youtube.com/watch?v=betmnkaXF1A>

*Additional details about the work of the **Environmental Enforcement Section**, will be found in the Appendix 3 of Appendix C.*

Defending Arizona's state agencies is one of the most significant duties of this office. The Agency Counsel Section ("ACS") represents more state agencies, boards, commissions, elected officials and judicial officers on more legal issues than any other section of the Office of the Attorney General.

*The work of **The Agency Counsel Section** is explored in more detail in the Appendix 4 of Appendix C.*

Under Attorney General Horne's leadership, the Civil Division has enjoyed a diverse set of cases to handle, with everything from fish pedicures to in-state college tuition controversies for children of illegal immigrants.

A video explaining the argument over the tuition matter is found here: <http://www.youtube.com/watch?v=fdWVX-pzkJ0>

The Division consists of seven sections: Education and Health, Employment Law, Liability Management, Licensing and Enforcement, Natural Resources, Tax, and Transportation. The Division also has Senior Litigation Counsel that handles complex litigation through the Division and office. The sections handle a wide variety of legal matters on various topics and provide client advice, legal representation and litigation support in administrative, civil and appellate issues.

*A more complete review of the work of the Civil Division, including: **EDUCATION AND HEALTH SECTION (EHS)**, **Education Unit**, **Health Unit**, **EMPLOYMENT LAW SECTION (ELS)**, **ELS Advice and Hearing Unit**, **Workers Compensation**, **Litigation**, **Discrimination Charges**, **LICENSING ENFORCEMENT SECTION (LES)**, **LIABILITY MANAGEMENT SECTION (LMS)**, **NATURAL RESOURCES SECTION (NRS)**, **TAX SECTION (TAX)**, **TRANSPORATION SECTION (TRN)**, is found in Appendix D.*

The protection and welfare of Arizona's children has always been of utmost importance to Attorney General Horne. FY 2013 saw 84,630 court appearances by attorneys from the Child and Family Protection Division, a substantial increase from the previous fiscal year.

Some noteworthy achievements of the Child and Family Division in FY2013 include:

#### **Protective Services Section**

- Protected more than 16,793 children from abuse and neglect.
- Reunited 1,424 children with their parents
- Assisted in the adoption of 1,226 children by relatives or foster parents.

#### **Child Support Services Section**

- Established new child support orders of 4,046 families.
- Obtained child support judgments of over \$55.4 million resolving 4,322 actions for modification of support.
- Assisted DCSS in collecting over \$361 million in support.

Further information on the efforts of **Child and Family Protection Division**, including actions taken by the **Protective Services Section**, the **Child Support Section** as well as **Civil and Criminal Litigation and Advice**, go to **Appendix E** of this document.

Operating the Attorney General's office would not be possible without the hard-working members of the Administrative Services Division, which ensures the continued operation of the facilities, processes Human Resources and Procurement matters, develops and implements safety protocols for employees and in general, keeps things flowing smoothly so that the mission of Attorney General Horne's office is fulfilled.

Much of the success of this division is credited to its leadership and to an ongoing process of centralization and streamlining.

*Learn more about the operation of the Administrative Services Division, including: Human Resources, Procurement, and Facilities Management and Planning in Appendix F.*

The milestones met by the Attorney General Tom Horne in FY 2013 would not have been achievable without the support of the Business and Finance Division. The division is responsible for maintaining the financial stability of the AGO through continual process improvement as well as robust forecasting and analytics. In addition, the division is also responsible for debt collections for nearly every state agency, board and commission.

FY2013 saw implementation of a procurement system that has greatly enhanced the efficiency of the division by reducing the amount of people resources required to process payments. Collections Enforcement successfully increased their net collections to \$15.6 million, a 10% increase from the previous year. Perhaps most importantly, through strategic planning the AGO secured a permanent increase to the Victim's Right's Fund of over \$500,000.

*Additional information on the activities of the **Business and Finance Division**, including summaries on the processes of the **Bankruptcy and Collection Enforcement Section (BCE)**, **Budget and Strategic Planning**, **Grants Management**, and a more detailed explanation of the changes to the procurement processes implemented by the **Financial Services Section (FSS)**, please see **Appendix G**.*

One of largest aspects of the Attorney General's Office highest priorities in FY 2013 is the continued commitment to serving the citizens of Arizona through outreach into the state's many diverse communities. Through both formal and informal presentations, the AGO reached out to over 50,000 Arizonans to discuss topics such as identity theft, civil rights, senior abuse, life care planning and victim's rights.

Some notable initiatives in community outreach by Attorney General Horne in FY 2013 include an anti-bullying initiative aimed at 4<sup>th</sup> through 8<sup>th</sup> graders with the purpose of giving them the tools necessary to affect change for themselves and their schools. Additionally, the military outreach program found new and effective ways of training law enforcement and first responders on how to approach and interact with Arizona's veteran community.

*Further details on the work done by the **Community Outreach and Education Division** can be reviewed in **Appendix H***

# **APPENDIX LISTING FY 2013 ANNUAL REPORT**

## **APPENDIX A: SOLICITOR GENERAL'S OFFICE**

*Mission Statement, Major Responsibilities, Major Accomplishments: Appellate Brief Review Statistics, United States Supreme Court Practice, Ninth Circuit Court of Appeals Practice, Arizona Appellate Court Practice, Ensuring Fair Elections and Informed Public, Other Election Matters, Identification at the Polls and Proof of Citizenship, Pre-Clearance Under the Voting Rights Act, Campaign Finance Enforcement, Lobbying Enforcement, Arizona's Clean Elections Act, Defending Arizona Statutes, Initiative Challenges, Redistricting Litigation*

*Significant Achievements: Appellate Practice, AG Opinions, AGO Library and Research Services, Continuing Legal Education, Ethics, National Attorneys General Training and Research Institute (NAGTRI), Open Meeting Law Enforcement Team (OMLET), Independent Advice, CLE Presentations*

*CRIMINAL APPEALS/CAPITAL LITIGATION SECTION: Division Highlights*

*CRIMINAL APPEALS SECTION: Major Accomplishments*

*CAPITAL LITIGATION SECTION: Major Accomplishments, Executions, Cases Affirmed by the Ninth Circuit Court of Appeals, Cases Affirmed on Direct Appeal by the Arizona Supreme Court*

## **APPENDIX B: CRIMINAL DIVISION**

*CRIMINAL DIVISION: Mission, GF Budget FY11-12, Summary*

*ALLIANCE SECTION (ALL): Overview*

*TUCSON CRIMINAL SECTION (TCS): Overview, Major Cases*

*DRUG & RACKETEERING ENFORCEMENT SECTION (DRG): Overview, Major Cases*

*FINANCIAL REMEDIES SECTION (FRS): Overview, Major Cases*

*FRAUD AND SPECIAL PROSECUTIONS SECTION (FSP): Overview, Major Cases*

*HEALTH CARE FRAUD & ABUSE SECTION (HCFA): Overview, Major Cases*

*OFFICE OF VICTIM SERVICES (OVS): Overview, Major Cases*

*SPECIAL INVESTIGATIONS SECTION (SIS): Overview, Major Cases*

## **APPENDIX C: PUBLIC ADVOCACY AND CIVIL RIGHTS DIVISION**

*CONSUMER PROTECTION AND ADVOCACY SECTION: Overview*

*Accomplishments - Consumer Litigation Unit, Implementing the National Mortgage Settlement, Bank Of America Settlement, Protecting Consumers from Mortgage Fraud and Loan Modification Scams, Business Opportunity Fraud, Telemarketing, Do Not Call Violations, Auto Cases-Undercover Operations, Judgment Enforcement and Safety Actions, Pharmaceutical Matters, Privacy Matters, General Consumer Fraud Matters, Task Force Against Senior Abuse*



*CONSUMER INFORMATION AND COMPLAINTS UNIT: Complaints / Inquiries Statistics  
AGENCY UNIT: Department of Financial Institutions, Department of Real Estate,  
Department of Insurance, Department of Agriculture, Game and Fish Commission and  
Department of Game and Fish*

*TOBACCO ENFORCEMENT UNIT: Successfully Protecting Arizona's Share of Payments  
Received Pursuant to the Tobacco Master Settlement Agreement, Multi-year Settlement of  
MSA Payment Disputes, Enforcement of the Escrow and Directory Statutes, Investigation of  
Unlawful Internet Sales of Tobacco Products, New Law Regulating RYO Machines and  
Enhancing Tobacco Laws, New Law Prohibiting the Sale of E-Cigarettes to Minors,  
Enforcing the Public Health Provisions of the MSA through the Youth Tobacco Program*

*ANTITRUST UNIT: E-Books Litigation, Ensuring Schools Comply with Public Finance Law  
MONIES RECOVERED*

*CIVIL RIGHTS COMPLIANCE AND CIVIL RIGHTS LITIGATION SECTIONS: Overview,  
Outreach Activities*

*CIVIL RIGHTS CONFLICT RESOLUTION PROGRAM: Accomplishments*

*CIVIL RIGHTS LITIGATION SECTION: Major Cases*

*ENVIRONMENTAL ENFORCEMENT SECTION: Mission, Overview, Accomplishments,  
EES Information for FY13*

*AGENCY COUNSEL SECTION: Overview, Accomplishments*

#### **APPENDIX D: CIVIL DIVISION**

*EXECUTIVE SUMMARY: Civil Division Summary, Education and Health Sections (EHS) -  
Major Cases; Employment Law Section (ELS) – Major Cases; Licensing Enforcement  
Section (LES) – Highlights, Major Accomplishments, Other Savings to State Agencies;  
Liability Management Section (LMS) – Major Cases, Major Accomplishments, Dollars  
Saved; Natural Resources Section (NRS)- Major Accomplishments, Major Cases, Monies  
Saved or Generated; Tax Section (TAX) – Major Cases, Major Accomplishments, Dollars  
Generated or Saved; Transportation Section (TRN)- Major Case, Major Accomplishments,  
Dollars Generated or Saved*

*CIVIL DIVISION: Mission, Summary, Senior Litigation Counsel: Major Case Highlight;*

*EDUCATION AND HEALTH SECTION: Education Unit – Major Case Highlights, Major  
Accomplishments, Dollars Generated or Saved, General Accomplishments; HEALTH UNIT:*

*Major Case Highlights, Major Accomplishments, Dollars Generated or Saved, General  
Accomplishments; EMPLOYMENT LAW SECTION: Major Accomplishments, Workers  
Compensation, Litigation, Discrimination Charges; LICENSING ENFORCEMENT*

*SECTION: Major Highlights, Major Accomplishments, Cost Reimbursements, Other Savings  
to State Agencies; LIABILITY MANAGEMENT SECTION: Major Highlights, Major  
Accomplishments, Dollars Saved; NATURAL RESOURCES SECTION: Major*

*Accomplishments, Significant Matters, Major Highlights, Monies Saved or Generated; TAX  
SECTION: Major Case Highlights, Major Accomplishments, Dollars Generated or Saved;*

*TRANSPORTATION SECTION: Major Case Highlights, Major Accomplishments, Dollars  
Generated or Saved*

## **APPENDIX E: CHILD AND FAMILY PROTECTION DIVISION**

### *Mission, Division Summary*

*PROTECTIVE SERVICES SECTION: Trial Practice, Policy and Training, PSS Appellate Matters, Accomplishments, Substantive Practice Changes, Statistics and Charts*

*CHILD SUPPORT ENFORCEMENT SECTION: Trial Practice, Policy and Training, Appellate Matters, Statistics, Accomplishments, Veterans Outreach, Come to Court Events, Qualified Domestic Relations Orders (QDRO)*

*CIVIL AND CRIMINAL LITIGATION AND ADVICE: Mission, CLA Appellate Matters, Statistics and Charts, CLA Criminal Practice, Statistics and Charts, CLA Accomplishments, US Department of Health and Human Services Title IV-E Audit, Office of Child Welfare Investigations, Unemployment Insurance Benefits Cases, Employment Matters, Protective Services Review Team*

## **APPENDIX F: ADMINISTRATIVE SERVICES DIVISION**

### *Mission, Division Summary*

*FACILITIES MANAGEMENT AND PLANNING SECTION: Daily Operations, Safety and Security, Central Services, Continuation of Operations Planning (“COOP”)*

*HUMAN RESOURCES SECTION: Strategic Workforce Planning, Skilled Consultation, Organizational Development, Loss Prevention Oversight*

### *PROCUREMENT*

*Division Highlights – Facilities Management and Planning, Human Resources Section, Procurement Section*

## **APPENDIX G: BUSINESS AND FINANCE DIVISION**

### *Mission, Division Summary*

*BANKRUPTCY AND COLLECTION ENFORCEMENT SECTION (BCE): Mission*

*BUDGET AND STRATEGIC PLANNING SECTION: Mission, Highlights*

*GRANTS MANAGEMENT SECTION: Mission, Highlights*

*FINANCIAL SERVICES SECTION (FSS): General Ledger and Accounts Receivables, Payroll, Accounts Payable and Travel*

*Section Highlights – ProcureAZ, Infoview, Property Management Conversion, Case Accounting Unit, Payroll bi-Weekly Reports to ASD, Deposit Process*

## **APPENDIX H: COMMUNITY OUTREACH AND EDUCATION OFFICE**

### *COED OVERVIEW2013*

*GRANT FUNDED PROGRAMS: Governor’s Office of Child, Youth and Family, Department of Justice/Maryland Crime Victim Resource Center, Internet Crimes Against Children, Internal Initiatives*



**OFFICE OF THE ARIZONA ATTORNEY GENERAL**

**TOM HORNE**  
**ATTORNEY GENERAL**

**SOLICITOR GENERAL DIVISION**

**ROB ELLMAN**  
**DIVISION CHIEF COUNSEL**

**FY2013 ANNUAL REPORT**

**APPENDIX A**

**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.

**The Solicitor General's Office is responsible for:**

- Managing the State of Arizona's civil and criminal appellate matters;
- Managing the State of Arizona's appellate and post-conviction litigation;
- Overseeing the preparation and publication of Attorney General Opinions;
- Representing the Clean Elections Commission and the Secretary of State on election law issues and handling civil election law and campaign finance enforcements;
- Providing independent advice to state governmental agencies and boards in connection with administrative proceedings in which assistant attorneys general serve as advocates;
- Reviewing constitutional challenges to Arizona state laws;
- Coordinating the Attorney General's office-wide continuing legal education program;
- Providing advice to all attorneys employed by the Attorney General with respect to ethics and professionalism issues;
- Coordinating the work of the Open Meeting Law Enforcement Team and the Public Records Task Force.

## **I. Major Accomplishments in Fiscal Year 2013**

### **Appellate Brief Review Statistics**

Appellate briefing was prolific in FY 2013. SGO attorneys reviewed 375 appellate briefs in FY 2013, spanning work in Arizona state appellate courts (325 briefs), the Ninth Circuit (37 briefs), the United States Supreme Court (8 briefs), and other courts (5 briefs). See Significant Accomplishments section, *infra*. The review function covers briefing in the ordinary course in cases litigated by the Arizona Attorney General's Office, but also includes participation as amicus curiae in numerous other cases. SGO attorneys also participated in 11 moot court exercises.

### **United States Supreme Court Practice**

The United States Supreme Court agreed to hear Arizona's petition for certiorari in *Arizona v. Inter Tribal Council of Arizona*. The Solicitor General's Office drafted the briefs at the certiorari and merits stage and assisted the Attorney General in his preparation for oral argument. Although the Court affirmed the Ninth Circuit's decision and held that the National Voter Registration Act preempted Arizona's evidence-of-citizenship requirement as applied to applicants who use the federal registration form, the Court held that Arizona may again ask the Election Assistance Commission (EAC), a federal agency, to include Arizona's evidence-of-citizenship requirement among the Federal Form's state-specific instructions. Accordingly, Arizona has again requested the EAC to include its state-law requirement that registration applicants show some evidence of citizenship beyond a simple attestation in the state-specific instructions to the Federal Form.

In *Shelby County v. Holder*, the Solicitor General's Office prepared amicus curiae briefs (at the certiorari stage and on the merits) on behalf of several States in support of Petitioner Shelby County. At issue was whether Sections 4(b) and (5) of the Voting Rights Act are unconstitutional. Section 4(b) provides the coverage formula that determines which jurisdictions are "covered" for purposes of the Section 5 preclearance requirement. Under the preclearance requirement, a covered jurisdiction must submit any change in law, policies, procedures, and practice that "affects voting" to the Department of Justice for preapproval before implementing it. Nine States, including Arizona, and some portions of other States are required to obtain preclearance under a formula that Congress enacted in 1965 and subsequently reauthorized in 2006. The Supreme Court held that the coverage formula in Section 4(b) was not grounded on current conditions, was irrational, and could no longer be used as a basis for subjecting some States to preclearance requirements.

The Solicitor General's Office with the assistance of the Civil Rights Section also prepared amicus curiae briefs at the certiorari stage and on the merits on behalf of several States in support of Petitioner, Michigan's Attorney General in *Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary (BAMN)*. At issue is the constitutionality of

Michigan's constitutional provision that bars discrimination and preferential treatment on the basis of race, ethnicity, or sex in public education, public employment, and public contracting. The Sixth Circuit held that Michigan's constitutional provision violated the Fourteenth Amendment. Arizona and several other States have constitutional provisions that are similar to Michigan's constitutional provision. The amicus briefs argue that the States have an interest in eradicating discrimination and fostering diversity in their public institutions by affording equal treatment to all, regardless of race, sex, color, ethnicity, or national origin. The United States Supreme Court will hear argument on this case in the fall of 2013.

In *Adoptive Couple v. Baby Girl*, the Protective Services Appeal Unit with the Solicitor General's Office prepared an amicus curiae brief on behalf of eighteen States in support of Respondents on the merits. At issue was whether the South Carolina Supreme Court had correctly held that the Respondent biological father had met the definition of "parent" under the Indian Child Welfare Act (ICWA) and therefore had standing to claim that the adoption could not proceed because the provisions of the ICWA had not been met. The amicus brief argued that the States have an interest in upholding the lower court's interpretation of ICWA because allowing unwed fathers to acknowledge or establish paternity through prompt action is consistent with ICWA and with the States' interest in ensuring safe and stable adoptions. The United States Supreme Court held that because the biological father never had custody of the child, he was not entitled to the protection of the ICWA provision that requires a showing that serious harm to the Indian child is likely to result from the parent's "continued custody" of the child.

### **Ninth Circuit Court of Appeals Practice**

The Solicitor General's Office prepared the answering brief and participated in oral argument in *Isaacson v. Horne*. The plaintiffs challenged the constitutionality of Arizona's statute, A.R.S. § 36-2159, which prohibits a physician from performing an abortion on a pregnant woman except in a medical emergency, if the probable gestational age of the unborn child is twenty weeks or more. The federal district court upheld the law and denied plaintiffs' request for declaratory and injunctive relief. The Ninth Circuit reversed, holding that A.R.S. § 36-2159 is invalid under binding Supreme Court precedent. The Attorney General's Office and the Maricopa County Attorney's Office are planning to file a joint petition for certiorari in the Supreme Court.

In *Planned Parenthood Arizona Inc. v. Betlach*, the plaintiffs challenged the validity of A.R.S. § 35-196.05(B), which prohibits any health care provider who performs elective abortions from receiving public funding for the provision of family planning services. The federal district court held that A.R.S. § 35-196.05(B) violates the federal Medicaid Act's requirement that a state Medicaid plan must provide that any individual eligible for medical assistance may obtain such assistance from any provider qualified to perform the service required. The Solicitor General's Office assisted specially appointed counsel in preparing the briefs on appeal and preparing for argument in the Ninth Circuit, which has taken the matter under advisement.

Additionally the Solicitor General's Office participates in all the federal court civil appeals in the Attorney General's Office by evaluating whether to take appeals, substantially editing briefs, and preparing advocates for oral argument. These appellate matters involve a broad range of civil law, including environmental law, civil rights law, § 1983 law, preemption, and federal constitutional law.

### **Arizona Appellate Court Practice<sup>1</sup>**

In *Cave Creek Unified School District v. Ducey*, the superior court dismissed plaintiffs' claim that the Legislature's 2010-2011 K-12 education budget reconciliation bill violated A.R.S. § 15-901.01, which is protected from legislative amendment by the Voter Protection Act. The voters enacted A.R.S. § 15-901.01 by referendum, and it requires the Legislature to appropriate funds to adjust school equalization assistance funding for inflation by increasing both the base level and the transportation components of the revenue control limit each fiscal year by a statutorily defined growth rate. The superior court explained that although the voters intended to have annual appropriation of funds made to protect schools from the effects of inflation, § 15-901.01 is not self-executing or mandatory and therefore "the voters cannot require the legislature to enact a law that provides for that appropriation." The court of appeals reversed the superior court's dismissal of plaintiffs' complaint and ordered the superior court to enter declaratory judgment in plaintiffs' favor. The court determined that the Voter Protection Act authorized the voters to order the Legislature by statute to appropriate funds; A.R.S. § 15-901.01 required the Legislature to "provide for annual inflationary increases" in both of the revenue-control limit's components; and because the Legislature's budget reconciliation bill provided inflationary increases in only one of the revenue-control limit components, the bill violated the requirements of A.R.S. § 15-901.01. The State filed a petition for review and the Arizona Supreme Court granted review on the following question: Does the Voter Protection Act authorize the voters to require the legislature to increase 'the base level or other components of the revenue control limit' as provided in A.R.S. § 15-901.01?" The oral argument is scheduled for July 23, 2013.

The Solicitor General's Office also participates in all the state court civil appeals in the Attorney General's Office by evaluating whether to take appeals, substantially editing briefs, and preparing advocates for oral argument. These appellate matters involve a broad range of legal issues, including state and federal constitutional law, tax law, juvenile law, administrative law, employment law, tort law, and workers' compensation law.

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<sup>1</sup> The cases summarized do not constitute all appellate matters in which Solicitor General's Office lawyers had substantial involvement during the past year. Our purpose is not to provide an exhaustive list of such cases, but to illustrate the breadth and depth of our involvement in the appellate arena by highlighting several representative cases.

## **Ensuring Fair Elections and an Informed Public**

In fiscal year 2013, attorneys from the Solicitor General's Office continued to represent the State in ensuring that Arizonans' right to vote and participate in fair elections remained secure. SGO attorneys worked to create a streamlined process for resolving "failure to file" campaign finance referrals from the Secretary of State's Office, resulting in reduced handling times and resolution of stale cases through issuance of final orders and collection actions.

### **Other Election Matters**

*Jones v. Mitchell* – After the primary election, Russell Jones, who was defeated in Legislative District 13, challenged one of the victor's eligibility to office. Jones claimed that Darin Mitchell did not reside within the District. Secretary Bennett was a nominal party. After a two-day trial before Maricopa County Judge Oberbillig, the court ruled that Mitchell was ineligible. At issue during the case was whether the plaintiff had properly served the defendant by notifying the Secretary of State's Office as the filing officer. The Secretary's Office is the proper party for service in nomination petition challenges, but not in an election contest. Plaintiff contended that because the defendant had actual knowledge, the defect, if any, was waived. When the trial court issued its ruling, we had an oral telephonic argument at the court of appeals and then again at the Arizona Supreme Court, thereby stopping at each level in a single day. The Supreme Court declined jurisdiction and sent it back to the Court of Appeals, where it was fully briefed and argued. The Court of Appeals then held that the defect in service of process was not waived, vacated Judge Oberbillig's ruling and dismissed plaintiff's complaint.

*Rapp v. Miranda* – In this election contest, Plaintiff alleged that Catherine Miranda, a candidate for the Arizona House of Representatives, was ineligible for office because her nomination paper and financial disclosure statement were forged. After a trial on the merits including testimony by a handwriting expert, Maricopa County Superior Court Judge Warner dismissed the action as untimely.

*Draper v. 50 States* – In the District Court for the Central District of California, Pepper Draper and numerous other plaintiffs sued each of the fifty states alleging that the different regulations regarding write-in votes for the office of President of the United States violated their rights under the Voting Rights Act and the Equal Protection Clause. Our office worked with counsel from attorney generals' offices in all of the other states to develop a strategy for getting pro hac vice status with the court and for defending the case. After much communication and cooperation, the California Attorney General's Office took the lead on filing a motion to allow the other attorneys conditional admission for the purpose of filing a 12(b) motion. California also took the lead on filing a comprehensive motion to dismiss under 12(b)(1), (2) and (6). Our office filed our own separate motion to dismiss and incorporated by reference much of California's brief. Plaintiffs' attorney, after receiving approximately twenty-four motions to dismiss and

joinders, filed a notice of dismissal of the case. While that notice was not procedurally correct, the Court has closed the case.

### **Identification at the Polls and Proof of Citizenship**

2013 saw the culmination of litigation commenced during fiscal year 2008, when the State successfully defended the 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 year 2010, following an adverse opinion from the Ninth Circuit Court of Appeals reversing the district court's decision in part, SGO attorneys successfully petitioned the court for en banc review. Attorney General Horne argued the case in June of fiscal year 2011. The Ninth Circuit issued a divided opinion in fiscal year 2012, affirming the district court's judgment against the Plaintiffs in most respects. The Supreme Court granted the petition and the SGO worked with Attorney General Horne to craft a merits brief and coordinate support among amicus curiae. Attorney General Horne argued the case on March 18, 2013. The high court issued a mixed decision on June 17, finding that federal law preempted Arizona's proof-of-citizenship additions to a federal voting form, but paving the way for potential relief in lower courts, declaring that "it would raise serious constitutional doubts if a federal statute precluded a state from obtaining the information necessary to enforce its voter qualifications," and stating that Arizona could apply to the EAC for a state-specific requirement that potential registrants furnish evidence of citizenship.

### **Preclearance Under the Voting Rights Act**

Attorneys from the Solicitor General's Office continued to manage the preclearance process on behalf of state agencies such as the Secretary of State's office and the Citizens Clean Elections Commission. SGO attorneys submitted four policy and procedural changes to the Department of Justice for preclearance under Section 5 of the Voting Rights Act before suspending preclearance submissions when the Supreme Court took review in the *Shelby County* case. See description above under *United States Supreme Court Practice*. SGO attorneys, working with Attorney General Horne, submitted the lead amicus curiae brief in support of Shelby County, Alabama's successful constitutional challenge to the "coverage formula" that had burdened Arizona and other jurisdictions with undue administrative burdens since the early 1970s. The State submitted twenty-five legislative measures, policies, and procedural changes to the Department of Justice for preclearance under Section 5 of the Voting Rights Act.

### **Campaign Finance Enforcement**

This fiscal year the Solicitor General's Office opened 20 compliance matters for political committees' failure to file January 31<sup>st</sup> Campaign Finance Reports. Five of those committees have already been brought into compliance plus 14 matters in which SGO investigated, issued orders, and sent to collections. Another 45 failure to file matters regarding previous election cycles and reports were handled, with 29



committees brought into compliance and 16 committees in which the SGO investigated, issued orders, and sent to collections.

### **Lobbying Enforcement**

In fiscal year 2013, the SGO responded to 10 reasonable cause notices from the Secretary of State for failure to file required lobbyist reports. Of the 10 entities in question, 9 were brought into compliance, including several whose reports had lagged from prior years.

### **Arizona's Clean Elections Act**

Attorneys from the Solicitor General's Office continued to advise the Citizens Clean Elections Commission.

### **Defending Arizona's Statutes**

Attorneys from the Solicitor General's Office continued to represent the State in lawsuits challenging the constitutionality of Arizona's election laws.

*Pima County v. Town of Marana* – In this superior court case, the State of Arizona intervened to defend against a claim that A.R.S. § 9-514.01 was an unconstitutional special law. The statute enables a city or town to acquire by annexation a wastewater utility located within the city or town, but owned or operated by a county. Pima County and Marana were ultimately able to settle their dispute and the Legislature repealed the statute as part of that settlement. See 2013 Session Laws Chapter 22, House Bill 2492. This case had been ongoing since the fall of 2011. A stipulation for dismissal, with all parties to pay their own costs and attorneys' fees, was filed on June 28, 2012.

*Galassini v. State of Arizona* – In this federal district court case, the plaintiff claims that various campaign finance statutes were unconstitutionally burdensome as applied to small dollar ballot measure committees. The Legislature amended the requirements for small committees and created a new \$250 threshold committee. Under this new definition, a group that organizes to support or oppose a ballot measure or candidate need not register as a political committee unless it intends to spend or seek donations exceeding \$250. See A.R.S. § 16-901(19). The parties have briefed summary judgment motions and are awaiting a ruling.

*City of Tucson v. State of Arizona* – The City of Tucson and intervener City of Phoenix allege that A.R.S. § 16-204, which aligns election dates for all candidate elections occurring in the state to the even-numbered years, is unconstitutional because it conflicts with the cities' charters. Trial is set for July 25 and 26 in Pima County Superior Court. Appeals to the Court of Appeals and Supreme Court regardless of the outcome in the Superior Court.

*Arizona Libertarian Party v. Bennett* – This case is currently awaiting briefing in the Ninth Circuit. Plaintiffs Arizona Libertarian Party, Arizona Green Party, and some individual members of both parties alleged that A.R.S. § 16-152 is unconstitutional because it violates the Libertarian and Green Parties’ first and fourteenth amendment rights. Specifically, A.R.S. § 16-152 dictates the format for the paper voter registration form and provides that in the party preference box, the two parties with the highest number of registrants in the most recent election for governor are listed along with a blank for “other.” Plaintiffs claim that this form provides preferential treatment to the Democratic and Republican parties and serves no other purpose but to preserve their status as the primary parties in Arizona. The district court upheld the statute and granted summary judgment in favor of Secretary of State Bennett.

### **Initiative Challenges**

The Secretary of State is the filing officer for statewide ballot measures. During the 2012 election cycle, there were five initiative challenges, four of which involved the Secretary as a nominal party, but two required our office to defend the Secretary on the merits.

*Pedersen v. Bennett* – This citizens’ initiative sought to create a one cent permanent sales tax increase to fund public education, infrastructure projects, and other public services. When applying for a petition serial number for the initiative, the committee inadvertently submitted two different versions of the proposed law, a paper version and an electronic version on a CD. The Secretary’s office accepted the CD, but never looked at it, as it was unnecessary to the Secretary’s needs. The paper version was date and time stamped. The committee, however, circulated the version from the disc along with each petition sheet. A.R.S. § 19-121.01 requires the Secretary to remove from processing all signature sheets that are not attached to a copy of the title and text of the measure. The Secretary’s office therefore rejected the committee’s petition as failing to qualify for the ballot and the committee sued seeking mandamus relief. During the ensuing litigation, the Secretary’s office continued to process the petitions in case the court ruled in the committee’s favor. Maricopa County Superior Court Judge Oberbillig ruled in favor of the committee and held that it had substantially complied with the constitutional and statutory requirements. The Arizona Supreme Court affirmed, but noted that Secretary Bennett had acted appropriately and had been put in a difficult position because of the committee’s actions in filing two conflicting versions of the proposed text. As a result, the Court ordered that the each party had to bear their own costs and attorneys’ fees. Considering that the committee hired a cadre of attorneys including former Justice Stanley Feldman, and sought attorneys’ fees for the superior court proceedings in an amount exceeding \$50,000, this ruling was a big win for the State.

*Quality Education & Jobs v. Tobin* – This lawsuit involved the same initiative as the *Pedersen* case. In this suit, the committee alleged that the Legislative Council’s analysis of the proposed initiative, as contained in the publicity pamphlet in accordance with A.R.S. § 19-124, was misleading and not impartial. The Secretary was nominal in

this lawsuit as the publisher of the publicity pamphlet. After a hearing in the superior court, Judge Rea ruled in favor of the committee. The Arizona Supreme Court affirmed.

*Quality Education & Jobs v. Bennett* – In this third lawsuit involving the same initiative, the committee alleged that the yes/no ballot language printed in the publicity pamphlet and on the ballot was misleading and not impartial. The committee sued Secretary Bennett as the publisher and author of the yes/no language and Attorney General Horne because he approved the language. The committee alleged that the language characterizing the one-cent sales tax as an increase was misleading, as it claims that the initiative was merely making the previous temporary sales tax permanent. The Secretary disagreed as the two sales taxes were not identical in effect despite being for the same amount. We argued that A.R.S. § 19-125(D) does not require the same “impartial analysis” that A.R.S. § 19-124 requires with respect to the Legislative Council. Furthermore, A.R.S. § 19-125 limits the description to fifty words. Judge Rea ruled in our favor and the Supreme Court affirmed.

*Save Our Vote v. Bennett I* – This case concerns a citizens’ initiative that proposed to do away with the traditional political party organized primary elections and instead created a “top-two” primary where the top two vote-getters regardless of party for a given office would advance to the general election. Plaintiff, a committee that opposed the initiative, sued for declaratory relief, alleging that the proposed constitutional amendment violated the separate amendment rule of Article 21, Section 1 of the Arizona Constitution. Secretary Bennett was nominal in this matter. The superior court ruled in favor of the Plaintiff, but the Supreme Court reversed.

*Save Our Vote v. Bennett II* – This case involved the same initiative as above. Here, the plaintiff alleged that additional petition signatures should have been invalidated by the Secretary and counties. After a half day’s trial, Maricopa County Superior Court Judge Rea held that a sufficient number of signatures qualified the measure for the ballot.

*Open Government v. Purcell* – This case also involved the top-two primary initiative. The plaintiff was the committee supporting the initiative. Plaintiff alleged that too many signatures had been invalidated and that they were capable of being rehabilitated. Plaintiff also alleged that the formula for extrapolating the number of qualifying signatures from the sample size actually verified was unconstitutional and resulted in a double subtraction. The parties stipulated to table the issue concerning the constitutionality of A.R.S. § 19-121.04 pending the outcome of the trial on the signatures themselves. After a half-day’s trial, Judge Rea ruled that the committee had obtained a sufficient number of signatures and that the initiative qualified for the ballot. The Legislature has since amended A.R.S. § 19-121.04 and removed the double-subtraction problem. See 2013 Session Laws Chapter 209, House Bill 2305. A petition to refer the entirety of House Bill 2305 has been filed. The committee must obtain 86,405 valid signatures by September 12, 2013 in order to qualify for the 2014 ballot.

## **Redistricting Litigation**

There are three lawsuits pending concerning the legislative and congressional maps drawn by the Arizona Independent Redistricting Commission. All of the plaintiffs sued Secretary Bennett as a nominal party charged with implementing the maps.

*Harris v. AIRC* – Plaintiffs alleged in federal district court that the legislative map violates the Equal Protection Clause and the one person one vote principle because the AIRC systematically overpopulated Republican plurality districts and underpopulated Democrat plurality districts. A five-day trial before a three-judge panel was held from March 25 to March 29, 2013. The parties are still awaiting the final decision. A direct appeal to the U.S. Supreme Court is expected.

*Leach v. AIRC* – Plaintiffs alleged in state court that the congressional map violated the Arizona Constitution. Discovery is still ongoing and trial has not yet been scheduled.

*Arizona State Legislature v. AIRC* – Here, the Legislature contends that the existence of the AIRC, as established by citizens' initiative, Proposition 106, in 2000, violates the Elections Clause of the U.S. Constitution because it impermissibly removes authority from the Legislature. The AIRC filed a motion to dismiss, which has not yet been ruled on. This case is pending in the district court. The Legislature has sought a three-judge panel for this case, like *Harris*, for the purpose of a direct appeal to the U.S. Supreme Court down the road.

## **Nominating Petitions Litigation**

The office successfully defended a challenge to Arizona's recall petition process.

## **II. 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 year 2013, the Solicitor General's Office reviewed 375 briefs<sup>2</sup> and coordinated moot court sessions in connection with approximately 26 cases in which AGO attorneys presented oral argument. In addition, attorneys in the Solicitor General's Office participated as judges in numerous moot court sessions.

### **Attorney General Opinions**

The Solicitor General's Office coordinates the production of Attorney General opinions. In fiscal year 2013, the Attorney General received 17 opinion requests and

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<sup>2</sup> This figure includes opening, answering, reply, and *amicus* briefs filed in various appellate courts as well petitions (and responses to petitions) for review and petitions (and responses to petitions) for special action.

issued 3 formal opinions. Those opinions addressed topics including the Preemption of the Arizona Medical Marijuana Act (Proposition 203), Powers of the Board of Technical Registration, and A School District's Ability to Provide a Preschool Program to Children Without Disabilities.

### **AGO Library and Research Services (LRS)**

In fiscal year 2009, the Solicitor General's Office assumed management responsibility for the Attorney General's Office's law library. Since then, the library has streamlined procedures for ordering books, increased legal research training opportunities for attorneys and paralegals, and placed an increased emphasis on electronic research tools.

Fiscal year 2013 saw a great deal of activity in LRS. AGO library patrons (AGO attorneys and paralegals) visited, emailed, or telephoned the AGO library approximately 1100 times between July 1, 2012 and June 30, 2013.<sup>3</sup> Of these interactions, 42 percent were in-person visits to the library; 21 percent of the time library patrons accessed the library by telephone; and 37 percent of the time library patrons accessed the library by email. Assistance was requested from the AGO librarian 77 percent of the time that an interaction occurred. The requests were diverse but primarily consisted of troubleshooting requests, research guidance, Inter-library loan requests, and complex research requests.

These figures project patron library usage to be approximately 4.2 interactions per day with approximately 3.2 of those daily interactions comprising requests for assistance. Requests come from employees all over the state. The goal is same-day resolution of requests for assistance, and, with the exception of intricate research projects, this goal was attained in most cases.

In addition to troubleshooting and research assistance, the AGO Library is responsible for preparing procurement requests for AGO Library print materials, renewing subscriptions within budget, and keeping library materials updated. The Library Director also participates in negotiations with electronic research database vendors. This year the AGO added the WestlawNext research database platform to its electronic research capabilities. This addition, although significant to the legal researchers in the Attorney General's Office, was acquired with only a slight increase to the overall electronic database budget.

The AGO library coordinates monthly, statewide Westlaw training events for AGO employees by announcing the events, securing a training room if needed,

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<sup>3</sup> This metric was calculated based on AGO library patronage data that was collected for 224 of a possible 260 days (or 86% of the days available for collection). This captured data does not include requests to activate/deactivate access to electronic research databases. Data was not collected when the AGO librarian was not in the Office, or on days when the sheer volume of library work did not allow for the collection of data.

registering training participants, and keeping records of the trainings provided. Additionally, the AGO librarian developed and presented an overview of law librarianship to the Executive staff of the Attorney General's Office during FY13. Similarly, the AGO Librarian kept AGO attorneys and paralegals informed of important research information via email.

The AGO Library must also perform some accounting functions such as activating and deactivating electronic research database passwords and accounting for library inventory that has and has not been checked out. Since January 2011, a part-time LRS employee has performed these functions and has also ensured timely updating of resource materials. This employee also manages the library in the librarian's absence and carries out general maintenance projects.

This year the Library Director was appointed to an advisory committee of the Attorneys General Librarians' Initiative (AGLI) of the National State Attorneys General Program at Columbia Law School. This association of Attorney General Law Librarians is dedicated to advancing excellence and collegiality among Law Librarians at Attorneys General Law Libraries.

During FY13, the AGO librarian drafted several grant proposals for other sections of the Attorney General's Office. At the time of this writing, a major drug prevention initiative in Arizona's public schools has been fully funded.

### **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 year 2012-13, we offered 38 continuing legal education programs for a total of 65 CLE hours. The programs covered a wide range of legal topics. Almost fifteen hundred people attended these programs. At the prevailing rate charged by the State Bar for continuing legal education programs, the approximate value to the office of the CLE program is \$107,250.00. For additional information and a break down by program, see the attached spreadsheet.

### **Ethics**

Special Counsel for Ethics and Training lists the following accomplishments for Fiscal Year 2012:

- Provided office-wide assistance and advice on a broad range of ethical issues, including attorney ethics, public employee ethics, conflict of interest and screening.
- Served as Chairperson of AGO Ethics Committee.

- Provided advice and reviewed sensitive documents to respond to numerous high-profile public records requests.
- Served as back up for SGO Independent Advice attorney and provided advice to various Boards and/or Commissions.
- Provided five 2.5 hour ethics trainings for new attorneys in Protective Services Section.
- Served on an AGO committee tasked with drafting AGO's comment to a rule change petition to amend Supreme Court Rule 42, ER 3.8, dealing with special duties of prosecutors.
- Served on the Arizona State Bar Association's ethics committee.
- Served on a committee revising the Arizona Legal Ethics Handbook.
- Served as a presenter for the State Bar Leadership Institute on "Ethical Considerations of Public Practice."
- Served as a presenter for a State Bar Program on "Fee Agreements, Privileges and the No Contact rule."

### **NAGTRI Involvement**

- Served on the Advisory Board for the National Attorneys General Training and Research Institute (**NAGTRI**) and attended and presented at annual meeting.
- Coordinated nominations for Arizona's Assistant Attorneys General to attend NAGTRI training programs which resulted in approximately 26 AAGs receiving scholarship funding to attend 21 NAGTRI mobile training programs in 2012-13. In addition, approximately 78 AGO employees attended NAGTRI programs offered in-house, which included 8 webinars on technology issues, and a two-day program on human trafficking. These programs were provided by NAGTRI at no cost to the AGO.
- Served as faculty presenter for two NAGTRI mobile training programs:
  - Civility Training for New Mexico Attorney General's Office, October 15, 2012
  - Representation of State Agencies, April 9-10, 2013 (3 presentations):  
"Civility: Creating a Culture of Professionalism at Your Office"

“Social Media: Whoops, I Tweeted Again – The Pitfalls and Rewards of the Electronic Age”

“Ethical Considerations for a Public Law Practice: The Responsibilities of Working for an Attorney General’s Office”

## **OMLET**

The Solicitor General’s Office oversees the AGO’s Open Meeting Law Enforcement Team (OMLET). Half of SGO’s personnel are members of OMLET. OMLET consists of attorneys from every division in the AGO and focuses on investigating and enforcing Arizona’s open meeting laws. Currently, the team consists of 27 members.

In fiscal year 2013, the team opened investigations of 59 public bodies. Often, these public bodies have more than one formal complaint filed against them. In the last fiscal year, the team resolved matters involving 55 public bodies. Presently, there are investigations open against 67 public bodies. Team members investigate complaints of open meeting law violations from members of the public and work with public bodies to bring them into compliance with the law. The investigative process involves corresponding with attorneys and members of the public body and, when necessary, conducting depositions of witnesses. In some cases, the team must commence enforcement actions in superior court to bring a public body into compliance with the law.

## **Independent Advice**

The Solicitor General’s Office provides independent legal advice to state agencies, boards, and commissions as they conduct formal administrative hearings. The independent advisor provides advice on procedural and evidentiary issues during the hearing and assists the agency in preparing any necessary orders resulting from the hearing. This process protects the independence of the agency decision maker by ensuring that legal advice is available from a neutral attorney when needed. Independent advice is available to any state agency upon request when its regularly assigned assistant attorney general appears before it in a formal administrative hearing. Currently, the independent advisor appears at fifteen to twenty board meetings per month and advises numerous other agencies as requested. Clients include the Arizona Medical Board, the Arizona Board of Nursing, and the Arizona Board of Accountancy.

During the past year, in addition to responding to requests from agency heads for independent advice, SGO attorneys provided independent advice to various state agencies during the course of approximately 150 Board meetings.

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Attorney General's Office  
Office of the Solicitor General  
Fiscal Year 2013 CLE Presentations

**CLE PRESENTATIONS - 2012-2013 CLE YEAR**

No.	Date	Title of Presentation	Comment	Ethics	CLE Hrs	Attendees Phoenix	Attendees Tucson	Total Attendees	Total CLE Hours	Value
1	09/04/12	Cloud Computing (NAGTRI)			1	13	4	17	17	\$ 663.00
2	09/19/12	The Physician as Expert Witness: Provide Ethical & Effective Expert Testimony			2	52	5	57	114	\$ 4,446.00
3	09/28/12	Twelve Tips for Persuasive Legal Writing			1.5	51	18	69	103.5	\$ 4,036.50
4	11/09/12	Arguing Before the US Supreme Court: Reminiscences of Ryan v. Gonzales			1	25	2	27	27	\$ 1,053.00
5	11/27/12	Peer To Peer (NAGTRI)			1	4	0	4	4	\$ 156.00
6	11/29/12	Preparing Your Witness: How to be Ethical & Effective		2	2	26	7	33	66	\$ 2,574.00
7	12/07/12	Asking for Evidence of Citizenship When Registering to Vote: AZ Law Before the US Supreme Court			1	24	1	25	25	\$ 975.00
8	12/11/12	We Have Ways of Making You Talk - Cross Examination That Works			2	63	5	68	136	\$ 5,304.00
9	12/13/12	USADA & the Case Against Lance Armstrong			2	40	5	45	90	\$ 3,510.00
10	12/18/12	All About The Arizona Legislature			1	62	3	65	65	\$ 2,535.00
11	01/16/13	Applying Arizona Public Records Law			1	76	2	78	78	\$ 3,042.00
12	01/22/13	Assisted Crimes Against Children (NAGTRI)			1	8	0	8	8	\$ 312.00
13	01/24/13	Evidence at the Movies			3	71	17	88	264	\$ 10,296.00
14	02/08/13	Subtleties & Nuances in the Rules of Evidence: Rule 403 & More			2	58	7	65	130	\$ 5,070.00
15	02/19/13	Encryption (NAGTRI)			1	2	2	4	4	\$ 156.00
16	03/05/13	New Digital Forensics (NAGTRI)			1	4	2	6	6	\$ 234.00
17	03/11/13	Effectively Using Expert Witnesses in Trial			1	47	1	48	48	\$ 1,872.00
18	03/21/13	Everything You Ever Wanted to Know About Arizona's Open Meeting Law, or How to Make an OMLET (without breaking any eggs)			2	63	2	65	130	\$ 5,070.00
19	03/27/13	How, When & Why to Make Objections at Trial			2	57	4	61	122	\$ 4,758.00
20	03/29/13	Forfeiture Basics & Ethics		1	1	22	2	24	24	\$ 936.00
21	04/02/13	The Dark Side of Social Networking (NAGTRI)			1	9	1	10	10	\$ 390.00
22	04/04/13	CLE Book Club - Anatomy of Injustice: A Murder Gone Wrong		1	1	12	1	13	13	\$ 507.00

**CLE PRESENTATIONS - 2012-2013 CLE YEAR**

No.	Date	Title of Presentation	Comment	Ethics	CLE Hrs	Attendees Phoenix	Attendees Tucson	Total Attendees	Total CLE Hours	Value
23	04/18/13	An Introduction for Government Lawyers to the Law of Eminent Domain & Regulatory Takings			2	28	0	28	56	\$ 2,184.00
24	04/22/13	Human Trafficking (NAGTRI)		1.25	9	22	3	25	225	\$ 8,775.00
25	05/14/13	Gun Rights & The Constitution			1.5	48	1	49	73.5	\$ 2,866.50
26	05/17/13	A Panel Discussion Concerning State Contract Terms & Conditions: What are they & how do they work			1	21	0	21	21	\$ 819.00
27	05/21/13	Business Entities: Consideration for State Government Attorneys & Employees			1	42	2	44	44	\$ 1,716.00
28	05/30/13	Your Practical Guide to Getting (Just About) Anything Admitted at Trial			2	39	2	41	82	\$ 3,198.00
29	05/31/13	Preparation & Cross-Examination of Expert Witness: Focus on Civil Litigation	<b>CANCELLED</b>		2	0	0	0	0	\$ -
30	06/05/13	CLE Book Club - Chambermaid		0.5	1	8	0	8	8	\$ 312.00
31	06/06/13	Ethics at the Movies		3	3	68	6	74	222	\$ 8,658.00
32	06/11/13	Admissibility of Expert Testimony in Arizona Courts After the Adoption of the Daubert Standard			2	48	7	55	110	\$ 4,290.00
33	06/11/13	Wireless Networks (NAGTRI)			1	3	1	4	4	\$ 156.00
34	06/12/13	Starting Strong - How to Build a Winning Opening Statement			2	19	3	22	44	\$ 1,716.00
35	06/13/13	The Administrative Hearing Process: A Better Way to Resolve Disputes? The Wild West? Or a Little of Both?			1.5	51	3	54	81	\$ 3,159.00
36	06/25/13	Treatment for Addictions: Methods, Outcomes, Trends in Drug Use		1.5	1.5	72	8	80	120	\$ 4,680.00
37	06/27/13	Overview of ASU as an Academic Enterprise			1	30	1	31	31	\$ 1,209.00
38	06/28/13	US Supreme Court Review; Highlights of 2012-13 Term			2	65	7	72	144	\$ 5,616.00
				10.25	65	1353	135	1488	2750	
									<b>GRAND TOTAL</b>	<b>\$107,250.00</b>



**OFFICE OF THE ARIZONA ATTORNEY GENERAL**

**SOLICITOR GENERAL DIVISION**

**TOM HORNE**  
ATTORNEY GENERAL

**CRIMINAL APPEALS/CAPITAL LITIGATION SECTIONS**

**ROB ELLMAN**  
DIVISION CHIEF COUNSEL

**FY2013 ANNUAL REPORT**

**I. AGO Criminal Appeals Section & Capital Litigation Section Year in Review**

- Overview of Accomplishments:

In Fiscal Year 2013, the Criminal Appeals Section and Capital Litigation Section worked to uphold the convictions and sentences of criminal defendants in Arizona. The Sections filed 912 briefs, habeas answers, petitions for review, and responses to petitions for review, in addition to other substantive pleadings. Members of the Sections have also been involved in providing education and training on a variety of criminal law and procedure issues to prosecutors throughout the state. The Capital Litigation Section also successfully litigated in state and federal courts the constitutionality of Arizona's lethal injection protocol.

**Significant Achievements**

The prosecution of child sexual abuse cases is extremely challenging, full of potential pitfalls with the law continuously changing. The offenses are devastating to the victims, and the punishment upon conviction is substantial. These cases probably result in the greatest percentage of reversals. Retrying these cases years later is very difficult, and the victims are forced to relive their abuse. To attempt to educate prosecutors regarding this dynamic area of the law, Unit Chief Robert Walsh—an expert in this area—presented a full day seminar in March, entitled, “Avoiding Reversal in Sex Crime Cases,” for the Arizona Prosecuting Attorneys’ Advisory Council (APAAC). Besides dispensing practical advice on how to successfully litigate issues that frequently lead to reversal, Rob provided the 25 attending prosecutors with approximately 300 pages of written material that outlined the law governing a wide array of topics, including other-act evidence, expert testimony, the rape-shield statute, duplicitous indictments, and the Eighth Amendment. APAAC later sent Rob a letter thanking him for his “extraordinary efforts” and “simply outstanding” presentation, and quoted the compliments given by several attending attorneys. This will go a long way toward preventing future reversals and, more importantly, preventing victims from having to relive the abuse they have suffered.

**Section Highlights.**

- The Criminal Appeals Section consists of:

Attorneys: 24

- The Capital Litigation Section consists of:

Attorneys: 11

- Support Staff for both sections: 15

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

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. In addition, because the attorneys in the Section are appellate specialists, they provide consistent, efficient, and high-quality representation that individual counties are unable to provide. This increases the likelihood that dangerous criminals will have their convictions and sentences affirmed on appeal, protecting the community and saving resources that would otherwise be expended on expensive retrials and re-sentencings.

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

In addition to handling all post-verdict capital case proceedings in the State, the Section has assisted the Office with criminal issues that affect other sections, and has helped draft opinions for the Attorney General's Opinion Review Committee. Section members serve on the National Board of Directors for the Association of Government Attorneys in Capital Litigation, the Arizona Supreme Court's Capital Case Task Force, the Arizona Prosecuting Attorneys Advisory Council Ethics Committee, and the Arizona State Bar Jury Instructions Committee. Additionally, one of the members of the Section chairs the Executive Council of the Criminal Justice Section of the Arizona State Bar.

## **Major Accomplishments – Criminal Appeals Section**

It has been a challenging year for the Criminal Appeals Section. Seven attorneys left during the course of the fiscal year, depleting the experience level. Fortunately, we have had a good pool of applicants to replace the departing attorneys. The workload, as has always been the case, is quite heavy, but the attorneys have done a good job of balancing time constraints with the need to effectively brief each case.

While there have been numerous successes in both the state and federal courts, the following published opinions are of particular interest.

In *State v. Yonkman*, 231 Ariz. 496, 297 P.3d 902 (2013), the Arizona Supreme Court granted our petition for review and reversed and vacated a problematic decision of the court of appeals. Yonkman was suspected of molesting his daughter and, when questioned at his home, he invoked his right to counsel and the officer left. His wife subsequently called the case detective and said that the daughter had “recanted.” The detective told her that Yonkman could take a polygraph “if he wanted to” so the detective could “close the investigation.” Yonkman called, scheduled a meeting, then voluntarily came down to the police station, was reminded of his *Miranda* rights, and eventually confessed. On appeal, the court of appeals reversed Yonkman’s convictions, holding that his confession was inadmissible because the detective “induced” him to contact the police through his wife in violation of *Edwards v. Arizona*, 451 U.S. 477 (1981). We argued, and the supreme court held, that the conversation between the wife and detective did not constitute reinitiation by the police, and that Yonkman himself reinitiated contact by scheduling the meeting, and going to the police station.

In *State v. Valentini*, 231 Ariz. 579, 299 P.3d 751 (App. 2013), the Arizona Court of Appeals addressed the issue of whether juror unanimity was requested on the *mens rea* element of second degree murder. Valentini (aka Bryan Stewart) killed his former girlfriend and her body was never found. The State charged Valentini with second-degree murder alleging that he intentionally, knowingly, or recklessly killed the victim. At trial, Valentini’s attorney argued to the jurors that, if they found Valentini killed the victim, they had to unanimously agree on which mental state he possessed. In response to a jury question during deliberations, the trial court instructed the jurors that they did “not have to be unanimous as to which of the three” culpable mental states Valentini possessed. On appeal, we argued, and the court of appeals agreed, that “the three mental states applicable for second-degree murder are simply alternate means of satisfying the *mens rea* element of the single crime of second-degree murder.” The court also noted that, by proving the mental state of intentionally, the State necessarily proves the lesser mental states of knowingly and recklessly; and by proving knowingly, the State necessarily proves recklessly. This was a high profile case that was featured on 48 Hours Mystery—“The Stranger Beside Me.”

*State v. Loney*, 230 Ariz. 542, 287 P.3d 836 (App. 2012), addressed the issue of whether—in closing argument—a prosecutor could argue to the jurors that the defendant fit “the sexual predator profile.” Under Arizona law, an expert may testify regarding general characteristics of child sexual abuse victims and predators, but may not give an opinion of whether the alleged victim or the defendant fit those characteristics. Based upon that expert testimony, and Loney’s actions, the prosecutor argued to the jurors that Loney fit what was, essentially, a “sexual predator

profile.” The court noted that, while the expert was prohibited from offering such an opinion, “the prosecutor was permitted to argue all reasonable inferences based on the testimony of [the expert],” and “could properly argue that Loney fit the profile of a sexual predator.”

In *State v. Delgado*, 232 Ariz. 182, 303 P.3d 76 (App. 2013), the Arizona Court of Appeals held that the aggravated assault by “strangulation” statute was constitutional. Delgado claimed that the statute was “unconstitutionally vague” because it required the jurors to determine whether the defendant “impede[d] the normal breathing or circulation of blood of another person by applying pressure to the throat or neck by obstructing the nose and mouth.” We argued, and the court held, that “the fact that ‘normal’ may not be the same for all persons does not render the statute unconstitutionally vague.” The court also held that the trial court did not abuse its discretion in admitting the testimony of the State’s “strangulation expert” (an emergency room doctor), and allowing him to opine that photographs of the victim’s injuries were “consistent with” strangulation.

### **Major Accomplishments – Capital Litigation Section**

It has been a challenging year for the Capital Litigation Section. The workload is extremely heavy and we are severely understaffed, but the attorneys have done an outstanding job of balancing time constraints while prioritizing the specific needs of each case.

Attorneys in this section handle capital direct appeals and federal habeas litigation in addition to state post-conviction proceedings. There are currently 125 capital cases on appeal in Arizona.

The Attorney General succeeded in securing a special appropriation from the Arizona legislature to augment the Capital Litigation Section’s personnel during fiscal year 2014. The appropriation will enable the section to continue litigating state post-conviction cases arising in Maricopa County.

### **Executions**

#### **Daniel Wayne Cook**

Execution Date: August 8, 2012

Date of Crime: July 19, 1987

#### **Crime Summary:**

Cook, John Matzke, and Carlos Froyan Cruz-Ramos worked at a restaurant in Lake Havasu City and shared an apartment. On July 19, 1987, Cook stole some money from Cruz-Ramos. When Cruz-Ramos began searching the apartment for the money, Cook and Matzke tied Cruz-Ramos to a chair and began beating him with their fists and a metal pipe. Cook also cut Cruz-Ramos with a knife, sodomized him, stapled his penis to a chair, and burned his genitals with cigarettes. After several hours of this 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 went to sleep while Cook sodomized Swaney. When Cook was finished, he woke Matzke and the two men strangled Swaney with a bed sheet. Matzke pled guilty to second-degree murder

and testified against Cook.

Richard Dale Stokley

Execution Date: December 5, 2012

Date of Crime: July 8, 1991

Crime Summary:

On July 8, 1991, Stokley and Randy Brazeal kidnapped two 13-year-old girls near Elfrida in Cochise County and took them to a remote area, where they raped them. Fearing the consequences, they agreed to kill the girls, and each man strangled one of the girls. To ensure that the victims were dead, Stokley repeatedly stomped on them, and stabbed each of them in the right eye. Stokley and Brazeal then threw the bodies down a water-filled mine shaft.

**Cases Affirmed by the Ninth Circuit Court of Appeals**

Although there were several cases affirmed by the Ninth Circuit, below are summaries of decisions of particular interest.

*Jones v. Ryan*

Robert Glen Jones and co-defendant Scott Nordstrom were sentenced to death for six murders committed in Tucson in May and June of 1996. After denying Jones's habeas petition, the district granted a certificate of appealability on the issue of whether Jones had established cause and prejudice to overcome the procedural default of his claims of prosecutorial misconduct. In addition, the 9th Circuit expanded the certificate of appealability to include whether Jones's trial counsel rendered constitutionally deficient performance by failing to discover the inconsistencies in the testimony at his trial, the testimony at Scott Nordstrom's trial, and various police reports. AAG Lacey Gard successfully briefed and argued the case and the court found that on all contentions of prosecutorial misconduct, Jones's due process rights were not violated and there was no fundamental unfairness at his trial. The court denied Jones's ineffective assistance of counsel claims, finding no prejudice. Accordingly, the 9th Circuit affirmed the district court's denial of habeas relief. The State has filed a Motion for Warrant of Execution in the Arizona Supreme Court. The court will conference this matter in August.

*Poyson v. Ryan*

AAG Jon Anderson successfully argued this case where the Ninth Circuit affirmed the denial of habeas relief. Poyson and a co-defendant brutally murdered Leta Kagen, her 15-year-old son Robert, and Roland Wear in April 1996. The impetus for the murders was to steal money and a vehicle to travel to Illinois. In 1998 Poyson was convicted and sentenced to death for all three murders. On habeas appeal, Poyson argued that the Arizona courts failed to consider all of his mitigation because they required a causal nexus between the mitigation and the murders. He also raised claims of ineffective assistance of trial counsel for failure to investigate Poyson's possible fetal alcohol spectrum disorder. The Ninth Circuit found that the Arizona courts did consider all of Poyson's proffered mitigation and that his claim of ineffective assistance of counsel was procedurally defaulted.

In addition, the following cases were also affirmed by the Ninth Circuit during fiscal year 2013:

*Gulbrandson v. Ryan*  
*Henry v. Ryan*  
*Miles v. Ryan*  
*Rogovich v. Ryan*  
*Scott v. Ryan*

### **Cases Affirmed on Direct Appeal by the Arizona Supreme Court**

The Arizona Supreme Court affirmed thirteen capital cases during fiscal year 2013.

#### *State v. Rose*

Edward James Rose was convicted and sentenced to death for fatally shooting a police officer who attempted to arrest him after Rose presented a forged check at a check cashing store. On direct appeal before the Arizona Supreme Court, Rose alleged, among other claims, that his guilty plea was involuntary and not made knowingly and intelligently, and that his Eighth Amendment rights were violated by the presentation of victim impact evidence (the State played the audio recording of the “last call,” and the slain officer’s young sons stood before the jury dressed in attire that looked like police uniforms). AAG Laura Chiasson successfully briefed and argued this case. The Arizona Supreme Court affirmed the convictions and death sentence finding Rose’s guilty plea was knowingly, voluntarily and intelligently made. The Court also found the trial court did not abuse its discretion in admitting the emotional victim impact evidence.

#### *State v. Fitzgerald*

In April of 2005 John Vincent Fitzgerald traveled from his home in Hawaii to Sun City and killed his mother, striking her several times with a samurai sword and shooting her twice in the head. Fitzgerald was convicted of first degree murder and first degree burglary—the jury sentenced Fitzgerald to death on the murder conviction. On direct appeal, the Arizona Supreme Court rejected Fitzgerald’s claims that the trial court erroneously denied his motions for new trial and erroneously admitted rebuttal evidence to his mitigation. AAG Julie Done did an outstanding job briefing and arguing the case.

In addition, the following cases were also affirmed by the Arizona Supreme Court during fiscal 2013:

*State v. Dale Hausner*  
*State v. Scott Nordstrom*  
*State v. Isiah Patterson*  
*State v. Pete Vanwinkle*  
*State v. Rodney Hardy*  
*State v. Ronnie Joseph*  
*State v. Gilbert Martinez*

*State v. Fabio Gomez*  
*State v. Manuel Ovante*  
*State v. Steven Parker*  
*State v. Eric Boyston*





**TOM HORNE**  
**ATTORNEY GENERAL**

**OFFICE OF THE ARIZONA ATTORNEY GENERAL**  
**CRIMINAL DIVISION**

**ANDREW PACHECO**  
**DIVISION CHIEF**

**FY2013 ANNUAL REPORT**

**APPENDIX B**

**I. Criminal Division's 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.
- The mission is to investigate and prosecute Medicaid fraud; fraud in the Medicaid program; and abuse, neglect and exploitation committed in Medicaid facilities or by Medicaid providers.

**II. Division GF Budget for FY11-12:                   **\$4,099,800****

The Criminal Division (CRM) makes a positive impact on the lives of Arizona citizens by investigating and prosecuting a multitude of cases involving various types of crimes. The Criminal Division is also committed to providing numerous services for the victims of these crimes. In addition to general funds, the Criminal Division also receives funds from federal and state grant sources.

**III. Criminal Division Summary:**  
**Chief**

**Andrew Pacheco, Division**

The Criminal Division is divided into eight Sections: Alliance Section (ALL); Tucson Criminal Section (TCS); Drug & Racketeering Enforcement Section (DRG); Financial Remedies Section (FRS); Fraud & Special Prosecution's Section (FSP); Health Care Fraud & Abuse Section (HCF); Office of Victim Services (OVS); and Special Investigations Section (SIS)

**IV. Alliance Section (ALL):**

**Cameron Holmes, Director**

The Alliance Section provides support to the Southwest Border Anti-Money Laundering Alliance (Alliance). The Alliance is a consortium of the four Border State Attorneys General, the Arizona Department of Public Safety, the Phoenix Police Department, and the Arizona Department of Financial Institutions. It distributes funds obtained through a 2010 \$96 million Settlement Agreement between the Arizona Attorney General's Office and Western Union to law enforcement. Law enforcement entities in the Southwest Border area, which includes the four Border States and Mexico, are eligible for funding. Details about the Alliance and its grant process may be found at [www.SWBAlliance.org](http://www.SWBAlliance.org) or at [www.azag.gov/swbamla](http://www.azag.gov/swbamla).



In the past year the Alliance funded a grant to an anti-money laundering task forces in Brownsville and a bulk cash interdiction operation in Pinal County, AZ. The anti-money laundering task force joins previous grantees in New Mexico (Albuquerque and Las Cruces), Dallas, Los Angeles (2), San Diego (2), Phoenix, and Laredo.

They involve state, federal and local officers working in multi-disciplinary teams to create a chain of inter-related task forces concentrating on anti-money laundering enforcement at the highest levels. The new bulk cash interdiction operation in Arizona joins two earlier operations to intercept drug money on the highways in Nogales and Kingman, and another in Silver City, New Mexico.

The Alliance also distributes money transmitter transaction data to law enforcement pursuant to Memoranda of Understanding (MOUs). The Alliance now has MOUs with over 140 federal, state, and local law enforcement agencies all over the country and in Mexico and over 2,230 users of its Internet data site. Both of these figures are more than double last year's totals. Money transmitter transaction data is provided to member agencies through a secure internet connection.

The Alliance unites law enforcement anti-money laundering efforts through training and annual conferences held throughout the Southwest and in Mexico. In FY 2013 it trained 3,872 students for a total of 12,054 hours in a total of 68 events, using 367 Alliance-taught or Alliance-funded hours.

**V. Tucson Criminal Section (TCS):**

**Kimberly Ortiz, Section Chief**

TCS specializes in fighting cartel-related drug trafficking and money laundering through court-authorized electronic interception and phone exploitation, focusing the section's efforts against the Mexican cartels and U.S.-based transportation cells involved in the smuggling of drugs, weapons, money and humans across Arizona's southern border. TCS also specializes in public corruption and complex financial prosecutions, including mortgage fraud, securities fraud, identity theft, social security fraud, AHCCCS fraud, manufacturing of fraudulent credit cards, and other economic crimes. TCS also spearheads efforts against elder financial abuse cases in Southern Arizona and dedicates an attorney specifically to prosecuting elder financial exploitation crimes.

**i. Overview of Accomplishments:**

In FY2013, TCS prosecuted 518 active defendants, with 230 new criminal defendants initiated during the applicable time period. TCS assisted approximately 584 victims of crime and obtained approximately \$4,936,906 in court-ordered restitution. Additionally, Tucson-initiated civil forfeitures from criminal referrals and cash seizures generated approximately \$2,236,000 in asset sharing with law enforcement partners in Tucson and the greater Southern Arizona area.

**ii. Major Cases:**

State v. Rodriguez et al. Law enforcement officers received information that a criminal enterprise was conducting cocaine and bulk cash smuggling in the Phoenix area from the east coast. The investigation determined the enterprise would coordinate the pick-up of large amounts of currency from a stash residence in Peoria. Based on this information agents obtained and executed a search warrant at the residence. Three people were arrested and police seized approximately \$533,000.00 in U.S. currency, which was retrieved from an underground safe. Six individuals were indicted on Money Laundering charges. Prosecution is on-going.



**State v. Save Rendon et al:** TCS initiated an investigation into the Save-Rendon Drug Trafficking Organization targeting a drug smuggling enterprise that operated out of the Tucson, Arizona area. The DTO was responsible for using passenger vehicles with non-factory manufactured hidden compartments, to transport drugs from Mexico into the Southern Arizona region through the Nogales Port of Entry. The organization would transport cocaine from a predetermined drop-off location to residences located throughout the Tucson area. Once in Tucson, the DTO contacted buyers and arranged for transportation and transfer of the cocaine to the organization's buyers to destination cities including Los Angeles, CA, Philadelphia, PA, New York, NY, and Atlanta, GA. Simultaneous search and arrest warrants were executed on suspected members of the drug trafficking organization and their stash houses. The State forfeited two properties, 14 bank accounts (totaling approximately \$399,815.00 in U.S. currency), 14 vehicles including a 2008 Lamborghini Gallardo, a 2009 Audi R8 Quattro, a 2007 Lexus, and a 2006 Hummer H2. The investigation resulted in the indictment of 14 people on charges related to Money Laundering and Illegally Conducting an Enterprise. Prosecution is on-going.



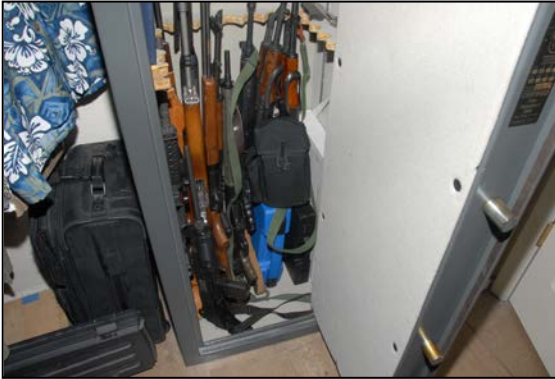
**State v. Loreto et al:** In this prosecution, adult Mexican drug traffickers exploited teenage Mexican school girls to body carry approximately four pounds of methamphetamine into the U.S. The traffickers brought the 16 and 17 year-old girls to a hotel room in Mexico where they taped packages of methamphetamine to their bodies. The girls then were directed to body carry the drugs through the Port of Entry. After smuggling in the drugs, they girls were met by the adult defendants who arranged shuttle tickets for them to Tucson and watched until the drugs made it to Tucson. All three girls were arrested and cooperated with police and prosecutors at trial. One adult Defendant pleaded guilty and the State pursued trial *in absentia* against the fugitive lead defendant who was convicted and faces 5-15 years in prison upon apprehension.

**State v. Lomelis:** TCS obtained jury convictions in July, 2013 against a Department of Public Safety Officer and his wife on conspiracy, money laundering, and theft charges related to embezzlement of over \$175,000 from the wife's employer based in Nogales, Arizona. Following a three-week jury trial in Santa Cruz County Superior Court, jurors returned guilty verdicts on 18 of the 19 counts charged. Santa Cruz County Attorney George Silva referred this Nogales Police Department investigation to the AGO prosecutors based on the complexity of the case. The Defendants face mandatory prison between 4.5 to 23 years on multiple felony counts. Sentencing Hearings are set in September, 2013.

**State v Lazo et al:** While investigating the murder of a member of the Midvale Park Bloods street gang, ICE/HSI's Gang Investigations Group received a tip that a gang member had insinuated that he had numerous assault weapons available for sale. Undercover agents were introduced to the gang as high-ranking Cartel members and made multiple purchases of firearms. At each firearm purchase, the Defendants believed the agents to be members of a Mexican drug cartel and were informed that the guns were destined for Mexico. The undercover investigation resulted in the seizure of cocaine, counterfeit currency, and five assault rifles, one sub-machine gun, and five handguns. Six weapons capable of inflicting mass casualties were removed from the hands of criminals, eliminating their use in future violence. The investigation also prevented a murder solicited by the gang leader and identified a home invasion crew. All of the five indicted gang members were convicted on charges including illegal enterprise, criminal street gang/syndicate, and conspiracy to commit armed robbery. Four were sentenced to prison terms,

followed by intensive probation upon release, and one was sentenced to 364 days in the Pima County Detention Center, followed by intensive probation.

**State v. Olea et al:** During the *Lazo et al.* weapons trafficking operation, TCS prosecutors and police agencies simultaneously pursued the investigative goal of furthering the unsolved gang murder investigation. TCS conducted defendant interviews, leveraged cooperation pleas, and pursued phone exploitation to develop sufficient evidence to prosecute four defendants for charges related to the shooting. All four defendants were convicted in June, 2013 on charges including conspiracy to transfer/sell marijuana, dangerous-nature negligent homicide, dangerous-nature aggravated assault, and illegally conducting an enterprise. Sentencings are scheduled for August and September, 2013 and the Defendants face mandatory prison ranges between 5–15 years.



**State v. Arbizo, et al:** DPS received a report from ASARCO Mines that mining and security employees may be involved in an on-going scheme to steal millions of dollars of raw copper. The investigation uncovered a conspiracy linking individuals in Nogales, Tucson and Southern California, who, over the course of six years, had stolen more than \$10,000,000.00 worth of copper which was then shipped to buyers in China. As the case developed, three Defendants came forward to give “free talks” which, in addition to providing other leads, confirmed the involvement of the owner of a recycling business operating in Nogales and Tucson, Arizona. In April, 2013, TCS obtained indictments against 18 Defendants on charges of theft, fraud, money laundering, conspiracy and illegal enterprise. Racketeering liens were filed against the accounts of the recycling operation, resulting in the seizure of over \$100,000.00. The defendant/proprietor filed an emergency motion to release the racketeering lien, which was litigated and successfully defended by TCS. Multiple parcels of residential and commercial property, equipment and vehicles have been referred to Tucson FRS for forfeiture. Prosecution is on-going.



**State v. Hough & Palomarez:** The City of Tucson (COT) Streets Department Transportation Administrator and Heavy Equipment Operation Specialist were indicted after a Tucson Police investigation into allegations of misappropriation and theft of COT resources during the completion of side projects in which both Defendants used the COT’s labor, equipment, and materials. Both Defendants entered into guilty pleas to two counts each of Theft. The COT finance department calculated restitution at \$5,000 per Defendant. Both Defendants were sentenced to jail and probation and ordered to pay restitution to COT.

**State v. Bagger, Tretiakoff:** The FBI Joint Terrorism Task Force obtained information that an organization called the Arizona Border Task Force was obtaining police badges, patches, ballistic vests, helmets, binoculars, and other items from ten different law enforcement vendors using fraudulent government purchase orders. The defendants kept some of the items, but also sold some of the items on eBay using the proceeds to procure weapons. The defendants were charged with fraudulent schemes, six counts of theft, attempted theft, aggravated identity theft, impersonating a police officer and trafficking in stolen property. Raymond Bagger, who targeted the victims online and created the fraudulent purchase orders, pled guilty to fraudulent schemes and artifices, and impersonating a police officer. He was sentenced to two and a half years in the Department of Corrections, followed by seven years probation thereafter. Paul

Tretiakoff, who received the stolen goods at his address and posted the excess goods on eBay, pled guilty to theft and attempted identity theft. He was sentenced to 1.5 years in the Department of Corrections, followed by seven years probation. The defendants were ordered to pay \$57,754.15 in restitution.

**State v. Parks:** The Tucson Police Department investigated accountant Jane Parks who worked for a Tucson law firm. Between 2006 and 2011, she used her position to issue direct deposit payments to four different bank accounts which she controlled. She pled guilty to theft and attempted theft. She was sentenced to two years and six months in the Department of Corrections, seven years of probation thereafter, and to pay \$577,621.23 in restitution.

**State v. Hanley:** Jeff Hanley was the officer manager for the Tucson Branch of Volt Management Services (Volt), a company who placed engineers and other professionals in temporary positions with other firms. Between 2006 and 2010, Hanley executed several schemes to defraud Volt of funds. The primary scheme was obtaining longevity bonuses for employees and then cashing the checks himself. The TCS AAG conducted an extensive review of the boxes of VOLT and Hanley's financial records, and organized the mass of paperwork into a cogent case. That insurmountable evidence resulted in acceptance of a prison-only plea. Hanley, who had no prior arrests or convictions, pled guilty to Theft and Attempted Aggravated Identity Theft. He was sentenced to one year and nine months in the Department of Corrections, seven years of probation thereafter, and ordered to pay \$535,828.41 in restitution.

**State v. Anderson:** Oro Valley Police Department investigated CNA Norma Anderson, for stealing personal property from her clients. Defendant Anderson was employed by Bayada Nurses for six years as a caregiver for elderly in-home patients. Police discovered she had pawned 49 separate items belonging to victims whose ages ranged from 67 to 89 years old. Anderson stated that she thought stealing and pawning client's jewelry was an easy way to make money and admitted that she was stealing the jewelry to feed a gambling addiction and thought that she would be able to replace the jewelry before anyone noticed. As her first felony offense, she pled guilty to felony theft, and was sentenced to 90 days jail, three years of probation thereafter, 500 hours of community service and restitution.

**State v. Mooney:** Adult Protective Services had a report that the defendant, who purported to be a handyman doing odd jobs for people in the Green Valley area, was exploiting a 94 year-old vulnerable adult. The victim wrote checks to Mooney totaling \$73,540.00 over several months, with one final \$25,000 check cashed with "investment" written in the memo line. When interviewed, the elderly victim was easily confused and unable to recall the name of the landscaper or what, if any, work may have been performed, but she denied giving him \$25,000 to invest. A medical evaluation of the victim showed that she suffered from dementia and was highly vulnerable. As his first felony offense, the Defendant pled guilty to theft, and was sentenced to eight months jail, five years of probation thereafter and ordered to pay restitution to the victim in the amount of \$68,250.00.

## **VI. Drug & Racketeering Enforcement Section (DRG):**

**Paula Alleman, Section Chief**

DRG combats drug trafficking and money laundering organizations operating within Arizona. The attorneys in this Section also provide legal advice and training on a statewide basis on issues involving search and seizure, research, Arizona's drug laws, prosecuting cases involving children found at drug-related scenes and courtroom testimony.

### **i. Overview of Accomplishments:**

DRG charged 322 new criminal Defendants. DRG was involved in 15 wire interception investigations which resulted in 49 indictments, charging 196 defendants. DRG obtained fines in the amount of \$1,466,863.50 to be paid by defendants.

### **ii. Major Cases:**

**State v. Christian Vivola, et al:** This investigation targeted individuals purchasing large amounts of marijuana in Anthem, AZ. The Defendants in this case were arrested while trying to arrange for a purchase of \$650,000 worth of



marijuana. These arrests culminated in search warrants being executed at three houses in Anthem, AZ and the seizure of over \$810,000 in cash, three houses, and two cars. The primary Defendant, Christian Vivola, pled guilty and was sentenced to supervised probation with a flat jail term of four months.

**State v. Ramon Enrique Vazquez-Urias, et al:** This wiretap investigation conducted by DEA began with the seizure of 30 pounds of methamphetamine. This Defendant played a major role in a Phoenix based Drug Trafficking Organization (DTO) and was identified as the primary courier for the DTO. The Defendant's home was searched following the investigation and officers recovered five pounds of methamphetamine. Police also found six pounds of heroin at a co-defendant's home, which this Defendant had delivered the night before. Defendant Ramon Enrique Vazquez-Urias pled guilty to three different drug trafficking counts and was sentenced to an aggravated term of five years in the Department of Corrections on each count.

**CWT 432:** The section assisted the Scottsdale Police Department and DEA with a joint wire interception investigation into a drug trafficking organization believed to be using couriers to transport multi-pound quantities of methamphetamine, heroin and cocaine to the Phoenix metropolitan area where it was then distributed into the community. During the investigation, officers seized approximately 7 lbs. of methamphetamine, 7.5 lbs. of heroin, 2 lbs. of cocaine, and \$175,000 in cash. 17 suspects were indicted and this prosecution is ongoing. One of the more significant participants in this organization recently entered a guilty plea and was sentenced to 6.5 years in prison.



**CWT-434:** The section assisted with a joint wire interception investigation conducted by Phoenix Police Department and the DEA. The investigation targeted a narcotic and marijuana distribution group based in Phoenix. The wire was terminated earlier than law enforcement would have preferred because calls were intercepted which indicated that high ranking members in Mexico wanted the Phoenix-based targets to assist them in collecting large drug debts. Specifically, Mexico-based members wanted the individuals in Phoenix to assist in the kidnapping of the people who owed the Mexico-based drug organization money. Agents were able to learn who was going to be kidnapped during the takedown and warn him. The investigation also led to the indictment of ten individuals and the seizure of two pounds of heroin, 750 pounds of marijuana and \$80,000 in drug proceeds. All of the ten defendants entered into plea agreements except for one, a long-time heroin and cocaine dealer out of Ohio. The investigation also provided information which led to a subsequent money laundering wiretap investigation.



**CWT 435:** The section assisted the Phoenix PD and DEA with a joint wire interception investigation into a drug trafficking organization believed to be using semi-trucks and trailers to transport methamphetamine and heroin into the United States from Mexico. The trucks would then travel to delivery yards in Phoenix or through Phoenix and on to a delivery yard in Los Angeles. At the delivery yards, PVC pipes containing heroin and methamphetamine would be removed from the axles from the trailers and transferred to customers. During the investigation, officers seized approximately 55 lbs. of methamphetamine, 18 lbs. of heroin, and approximately \$300,000 in cash. At the conclusion of this investigation, 27 suspects were indicted. Prosecution is ongoing.

**CWT 414:** The Section assisted DEA and Tempe PD in an investigation named Operation Crystal Lake. Operation Crystal Lake began in January 2012 and was a seven month-long investigation conducted into a Mexico based drug trafficking organization involved in distributing methamphetamine and cocaine. During the investigation, investigators seized 125 lbs of methamphetamine, 90 lbs of cocaine, 1.5 lbs of heroin, 225 lbs of hashish and \$1.7 million in drug proceeds. Additionally, 30 suspects were arrested and charged. Prosecution is ongoing.



**CWT 425:** The Section assisted DEA and Tempe PD in an investigation known as Operation Falkor. Operation Falkor began in July 2012 and is a 13 month long ongoing investigation targeting a Mexico based drug trafficking organization involved in distributing methamphetamine and cocaine. As a result of the investigation, 45 suspects were arrested and charged and investigators seized 175 lbs of methamphetamine, 33 lbs of cocaine, 10 oz of heroin and \$2.6 million in illegal drug proceeds. Prosecution is ongoing.



**State v. Norberto Meza Montoya:** The defendant was indicted on multiple counts of Possession of Dangerous Drugs (methamphetamine) for Sale, Illegal Control of an Enterprise, and Conspiracy after a months-long wiretap investigation conducted by the AGO, Tempe PD, and DEA. Approximately \$900,000 in bulk US currency was seized from Meza Montoya during the investigation. He pled guilty to two counts of Conspiracy to Possess Dangerous Drugs (methamphetamine) for Sale; as well as one count of Money Laundering. On February 12, 2013, Meza Montoya was sentenced to eight years in the Department of Corrections, to be followed by a four year supervised probation term. He was ordered to pay a total fine of \$91,500.

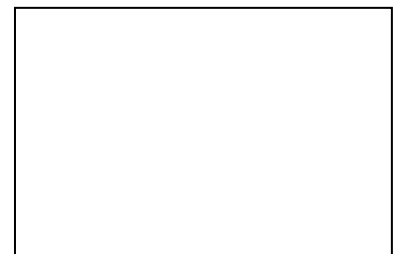
**State v. Leonel Galvez Leal:** The Defendant was indicted on multiple counts of Possession of Marijuana for Sale, Illegal Control of an Enterprise, Money Laundering, and Conspiracy after a months-long wiretap investigation conducted by the AGO, Tempe PD, and DEA. Over \$300,000 in bulk US currency was seized from Galvez Leal, along with over 6,000 pounds of marijuana. He pled guilty to two counts of Possession of Marijuana for Sale; and one count of Attempted Possession of Marijuana for Sale. On June 24, 2013, he was sentenced to eight years in the Department of Corrections, to be followed by a five year supervised probation term.



**CWT 440:** The Section assisted the HIDTA task force and the DEA in Operation Tormenta De Fuego. Operation Tormenta De Fuego was initiated in December 2012, and targeted a Mexico based drug trafficking organization responsible for the distribution of methamphetamine and cocaine in the Phoenix metropolitan area. To date, Operation Tormenta De Fuego has resulted in the arrest and indictment of 28 members of the Organization. Seizures have included 1.3 pounds of heroin, 6.7 kilograms of cocaine, 78.8 pounds of methamphetamine and a combined total of approximately \$891,000 in cash and assets. Prosecution is ongoing.

**CWT 433:** In December 2012, the AGO and the DEA began a wiretap investigation into the activities of Carlos Garcia Duran under CWT 433. The investigation lasted until May 2013. Ultimately, 19 individuals were indicted for crimes ranging from Conspiracy to Possession of Dangerous Drugs (methamphetamine) for Sale. Law Enforcement seized approximately 60 pounds of methamphetamine and 1 kilogram of cocaine during this investigation. Prosecution is ongoing.

**CWT 437:** In January 2013, the AGO, Mesa Police Department and DEA began a wiretap investigation into the activities of Rolando Saenz. Saenz was a marijuana trafficker who had connections with multiple sources of supply in Arizona, as well as customers in California and New York. The investigation lasted until May 2013. Ultimately, 16 individuals were indicted



for Conspiracy, Illegally Conducting an Enterprise, Possession of Marijuana for Sale, and Money Laundering. Law Enforcement seized approximately 1,500 pounds of marijuana and approximately \$210,000 in bulk US currency. Prosecution is ongoing.

**VII. Financial Remedies Section (FRS):**

**Aaron Ludwig, Section Chief**

FRS disrupts criminal enterprises and dismantles their organizations by prosecuting lawsuits charging them with racketeering offenses that give rise to the remedy of forfeiture. FRS effectively combats the impact of racketeering on legitimate commerce in Arizona. It does this primarily through forfeiture, which enables FRS to not only deprive organized crime of the property and profit that keep it in business, but to use that property and profit to fund the investigation and prosecution of its crimes. FRS conducts investigations of offenses relating to organized crime and racketeering, primarily money laundering and drug trafficking; facilitates the seizure of property; manages the seized property; prosecutes lawsuits mainly seeking forfeiture of the seized property; and, distributes the proceeds of the sold, forfeited property to, among others, law enforcement agencies to investigate and prosecute more racketeering offenses by other criminal organizations.

**i. Overview of Accomplishments:**

FRS initiated prosecution/filed lawsuits against 1,658 defendants (individuals and property), charging them with racketeering offenses giving rise to the remedy of forfeiture. Through forfeiture, FRS obtained \$11,522,843.00 for the benefit of crime victims, law enforcement agencies, and the State of Arizona. FRS provided to law enforcement agents statewide not only advice and instruction on racketeering and forfeiture through 84 trainings, but also invaluable assistance in procuring 39 seizure warrants.

**ii. Major Cases:**

**State v. Robert Arcieri:** FRS achieved a very successful outcome in this case by utilizing the remedy of forfeiture in an innovative way. Just before standing trial for attempted murder and armed burglary, Arcieri faked his death and eluded police for over 24 years. He was successful in staying hidden, largely because of the lucrative, legitimate business that he built, so FRS prosecuted a racketeering case against him for obstruction of justice. FRS forfeited over \$400,000 in real estate, bank accounts, and retirement accounts.

Home of Robert Arcieri



**State v. Barron Thomas and William Louden:** These two securities fraud cases referred to the AGO by the Arizona Corporation Commission demonstrate how effective forfeiture can be against all types of criminal enterprises, not just drug trafficking and money laundering organizations. They involved a Ponzi scheme and a fraudulent high-yield investment program. In the first case, Thomas sold bogus, airplane-based investments to approximately 90 Arizona investors and victims in 27 other states. He promised investors that their money would be adequately secured by the airplanes purchased, refurbished, and resold by him and his companies. The State determined that the investments were effectively unsecured by damaged, disassembled, unflyable airplanes

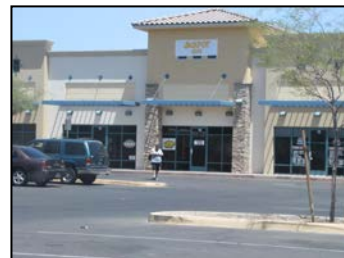
and parts and that the Defendant used investment monies from new investors to repay previous investors in a Ponzi scheme. FRS obtained a judgment against the fraudster Thomas that finds he committed racketeering offenses and awards the State \$9,479,300. The State also obtained \$100,000 from Thomas' co-conspirator, his mother, and those funds were distributed to victims in the related criminal case prosecuted by the AGO. In the Louden case, FRS obtained approximately \$470,000 from the fraudster Louden and the court-appointed receiver distributed all of it to Louden's victims.

**State v. Alphonso Torres:** This Department of Public Safety (DPS) case is a great example of FRS coordinating the efforts of and maintaining a collaborative partnership with law enforcement agencies, including



those in other states, to increase the effectiveness of forfeiture in Arizona. The DPS Highway Interdiction Team or HIT Squad stopped a semi-truck carrying a load of honeydew melons for traffic violations. A consent search with the assistance of a K9 revealed 2,200 pounds of marijuana hidden in the melons. The HIT Squad discovered that the melons were stolen from a produce distributor for use as a cover load and that a larger criminal enterprise was at work here. FRS worked quickly with the HIT Squad to obtain a seizure warrant for, among other things, the assets in the suspects' California banks. FRS coordinated with the San Bernardino County Sheriff's Office to seize the \$235,000 in them, which constituted the majority of the \$315,000 total forfeiture.

**Arizona Department of Gaming Cases:** FRS and the Arizona Department of Gaming (Gaming) worked together on a number of cases this year. FRS and Gaming disrupted an "internet café" (a business where walk-in customers put money on stored-value cards and swipe them to access computers to play internet-based poker), an illegal poker gambling organization, an illegal horse racing operation, and an illegal gambling organization that deployed throughout Arizona adult versions of the child's amusement game machine involving a crane that drops down to grab prizes. In this last case, the machines contained prizes valued at well over \$500, including Apple iPads, televisions, and laptop computers, and they were set for players to lose the first 1,200-2,000 plays. FRS forfeited most, if not all, of the assets of these illegal gambling organizations, including poker tables, real estate used for the illegal horse races, and over \$110,000 in prizes and cash from 18 of the crane machines/illegal gambling devices. This is the first known law enforcement action taken against this type of scheme in the country. Given the illegality of the machines and facts uncovered in the forfeiture case, FRS is considering the viability of action against distributors and manufacturers of the devices for violations of state law.



**State v. IQ Vending, LLC:** This case arises from an illegal gambling operation conducted throughout Arizona by IQ Vending, LLC and its owner, member and manager Jonathan Sanborn. At first blush, the machines at issue resemble regular arcade games. However, a portion of the business consisted of larger, complicated devices offering expensive prizes called. Investigators determined, among other things, that the machines were programmed to prevent a skilled player from having a chance to win a prize until the machines had accumulated a set, large number of losses or revenue.

**State v. Kellie Anthony and Levin White:** FRS won an appeal on a portion of this multi-million dollar racketeering case against a drug trafficking organization. While the property affected consists only of several classic cars, the successful appeal served to clarify an obscure but important procedural aspect of the forfeiture statutes that has been a source of countless motions and appeals over the years, statewide. One of the unique procedural advantages of Arizona's forfeiture statutes is the ability to strike the claims and answers of people who claim an interest in the assets of a criminal enterprise. Unfortunately, one longstanding appellate decision suggested that the procedure that allowed the State to forfeit property when a claimant failed to file a timely answer was the same as a civil default under the rules of civil procedure, because both required 10 days notice to the party that failed to file an answer. In civil procedure, the notice provides a 10 day grace period for the defaulted party to file an answer, but in forfeiture, the 10 day notice is just that, notice that the property will be forfeited in 10 days. Now, with this victory, the Court of Appeals has clarified its previous suggestion and ruled that the 10-day notice is not the notice in civil procedure, but instead the notice in forfeiture.



**State v. John LaVoie:** FRS obtained a directed verdict in a case that arose out of a forfeiture action previously prosecuted by FRS. After the State won a judgment against LaVoie in that forfeiture action, the State obtained certain real property pursuant to a writ of execution. A purported trust asserted ownership of the property and FRS challenged the existence and legitimacy of the trust since no trust documents could be produced by the so-called trust. It was apparent that the so-called trustee was acting as a surrogate for LaVoie, but in an abundance of due process, the judge held a trial. LaVoie's testimony failed

to demonstrate the legal existence of the trust and FRS obtained the directed verdict. The real property is now being sold and the proceeds will be applied to the outstanding judgment against LaVoie.

**Department of Economic Security/Child Support Lien Cases:** FRS developed in partnership with the Child Support Enforcement Section of the AGO, a process to satisfy child support liens out of the proceeds of sold, forfeited vehicles. Through this informal, but effective method of honoring child support liens on forfeited vehicles, each of the stakeholders in the forfeiture/child support enforcement effort will share in the proceeds of the sold, forfeited vehicles, on which the liens have been recorded at MVD prior to their seizure. The Departments of Public Safety and Economic Security facilitated this beneficial resolution. It is expected that law enforcement agencies statewide will emulate this model created through the efforts of FRS.

## VIII. **Fraud & Special Prosecution's Section (FSP):**

**Michael Benchoff, Section Chief**

FSP prosecutes white collar crime and fraud by individuals and organized criminal groups and organizations. FSP typically prosecutes criminal fraud in areas such as securities, insurance, real estate, mortgage, banking, taxes, government, telemarketing, computers, welfare and other areas of financial activity. The Section also focuses on gang related crimes, human smuggling and handles conflict matters from other counties.

### i. **Overview of Accomplishments:**

FSP continues to work on and/or opened 991 cases/Defendants and resolved 230 cases/Defendants. FSP charged 375 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 Section assisted over 23,379 victims and obtained restitution in excess of \$249,615,554. In addition, the Section handled 40 foreign prosecutions, many of which are extraditions or are prosecutions of Mexican citizens being tried in Mexico for offenses committed in Arizona.

This fiscal year the Section also prosecuted 84 Defendants who had violated their terms of probation.

### ii. **Major Cases:**

**State v. Russell Temple:** The Defendant, a 72-year-old man, was charged with Fraudulent Schemes and Artifices, Theft, and multiple counts of Forgery. The defendant had embezzled money from his HOA while acting as treasurer. Defendant pled guilty to Fraudulent Schemes and Artifices and was sentenced and placed on four years of supervised probation with white collar terms and a six-month initial term in jail. The Defendant also stipulated to and was ordered to pay \$328,587.76 in restitution to the HOA. The Defendant's poor health coupled with his age were considered during plea negotiations.

**State v. Esther Obrzut:** Between May, 2003 and February, 2011, Obrzut, acting as the medical insurance biller for two chiropractors who were unaware of her illegal acts, billed Cigna for \$1,152,799.00 for 4,490 chiropractic treatments that were never performed on her, her husband, and their two minor children. Of the over \$1 million billed, Cigna Health and Life Insurance Company paid out \$653,108.01. Esther Obrzut was sentenced to 2.5 years in prison for forgery, followed by five years probation for Fraudulent Schemes and Artifices and ordered to pay \$653,108.01 in restitution to Cigna.

**State v. Nazreth Derboghossian, et al:** Nazreth Derboghossian was charged in a 102-count indictment with Fraud Schemes and Artifices, Illegal Enterprise, Perjury, Forgery, Filing False Statements and Theft by Extortion, arising out of his alleged use of straw owners to purchase automobile dealership licenses and liquor licenses. Of the original eight Defendants, four pled guilty and three were dismissed. Defendant Derboghossian pled guilty to Fraudulent Schemes and Artifices, Illegal Control of an Enterprise and Forgery. The Defendant was sentenced to three years probation with white collar terms with one year in jail. Defendant Derboghossian was also ordered to pay restitution of \$1,430,428.22 and reimbursement of investigative costs of \$20,000.00, the latter of which is payable to the FIRG.

**State v. Barron Thomas:** Defendant Barron Thomas was accused of selling securities to allow him to invest in the purchase, refurbishing and sale of airplanes at a time when he knew that he could not perform as represented. The victims were provided with a 1-year or 2-year promissory note, promising annual interest of

12%. The Defendant obtained approximately \$10 million in investments. The Defendant was charged with Fraudulent Schemes & Artifices, Theft, Securities Fraud, Sale of Unregistered Securities, and Transactions by Unregistered Dealers or Salesmen. The Defendant pled guilty to Fraudulent Schemes & Artifices and Theft. He was sentenced to three years in the Department of Corrections, seven years on probation with white collar terms, and was ordered to pay restitution of \$9,479,300.

**State v. Donald J. Emmons, III:** Emmons was accused of operating a business where he offered guaranteed rates of return to investors who provided funds to purportedly renovate distressed houses. Investors were offered property deeds as security for their investments, but Emmons did not own the properties. He manufactured false deeds that indicated the investors were secured, but the deeds were never recorded. Emmons did no work to improve the properties. He collected in excess of \$4,000,000, and investors were never repaid. The money was used to repay earlier investors, and to pay for Emmons' personal expenses. On February 27, 2012 the Defendant was charged with Fraud Schemes & Artifices, Theft, Sale of Unregistered Securities, and Transactions by Unregistered Dealer or Salesman. Defendant pled guilty to Fraud Schemes & Artifices and Sale of Unregistered Securities and sentenced to 3.5 years in prison, a consecutive four year probation sentence on white collar terms and ordered to pay restitution of \$4,439,678.81.

**State v. Steven John Rogan:** Defendant ran two scams against his victims. In the first scam, he intentionally answered hundreds of fraudulent postings on Craigslist, in an attempt to get scam artists to send him counterfeit checks. He would then deposit the checks in bank accounts and withdraw the money immediately before the checks were cleared and discovered to be counterfeit. When confronted with individual counterfeit checks, Defendant claimed that he was unaware that the checks were counterfeit and blamed banks for clearing them and making money available to him. In the second scam, he operated four websites which were used as gateways for others based in Eastern Europe to process thousands of stolen credit card numbers for small dollar transactions. Despite the fact that the websites were not publicly indexed, looked identical to each other, did not actually sell products and generated a large volume of fraud complaints, the Defendant took a cut of the proceeds from these transactions and then moved the balance of the money via wire transfer to accounts in Cypress, Russia and Eastern European countries. When confronted, Defendant claimed to be unaware this was not a legitimate business. On July 11, 2012, the Defendant was convicted of Attempted Theft and Attempted Money Laundering. He was sentenced to three years of probation and ordered to pay \$96,079.89 in restitution.

**State v. Matthew Lyle Williams:** Williams fraudulently submitted false information about student attendance to the State Department of Education over a series of years to obtain payments for several charter schools. These fictional students would then be withdrawn after the 100<sup>th</sup> day of the school year, allowing them to be counted for the purposes of school funding formulas, but eliminating them from the rolls in time for them not to detract from the schools' AIMS testing scores. Defendant was convicted of Attempted Fraud Schemes and sentenced to three years probation and ordered to pay \$1,951,813 in restitution.

**State v. Deborah Cheryl Paura:** Paura ran a pyramid scheme, holding herself out as a "Class A trader" who engaged in "channel trading" – a strategy which would earn large returns on invested funds. She promised returns of 20, 30 and ultimately 40% on investor funds during several rounds of solicitations, the last of which required investors to contribute \$1,000,000. Most of the funds never reached her brokerage account; Paura diverted the bulk of the funds for personal use or to pay back other investors. Paura's trading history showed very few gains, far outweighed by significant losses. Paura received a reduced sentence over the State's objections. Defendant was convicted of Fraud Schemes, Theft and Transactions by Unregistered Dealer and sentenced to seven years probation and ordered to pay \$5,589,878.00 in restitution.

**State v. Randall Tucker et al:** The Defendant was part of a counterfeit check enterprise and used the counterfeit checks along with counterfeit identifications to purchase items at Target. The Defendants took advantage of a loophole in Target's check cashing system that allowed the first check for new customers to bypass check verification if the check was for an amount under \$300.00. The illegal enterprise obtained approximately \$77,716.71 in goods from Target over a seven month period. The Defendant pled guilty to Fraudulent Schemes and Artifices and Forgery. Defendant Randall Tucker was sentenced to seven years imprisonment and committed to the Department of Corrections. All Defendants have been ordered to pay a total of \$38,352.19 in restitution to Target.

**State v. Michael Salman et al:** Defendants, Michael, Suzanne and Frank Salman, were sentenced to probation for misrepresenting their income in order to receive AHCCCS health insurance benefits for themselves and their children. Prior to sentencing, as part of the plea agreement, the Salmans paid full

restitution in the amount of \$73,808.92 to AHCCCS. Michael Salman was also ordered to pay a fine of \$9,200. Both Defendants were ordered to complete 40 hours of community service each.

**State v. Roger Oliver:** Defendant Oliver, who has mental health issues, attempted to strangle his girlfriend after seeing she received text messages from a male co-worker. In April, 2012, the Defendant approached the witness in this case, a casual friend of Oliver's, and asked him to get Oliver a gun to kill the victim. The witness attempted to talk Oliver out of this, but then pretended to agree and suggested instead that the witness find someone to kill the victim for Oliver. The witness went to police with this information, who arranged for an undercover detective to pose as a hit man. Detective had telephone calls with Oliver on April 9, 2012 and April 10, 2012 to arrange a meeting. A Detective met with Oliver on April 10, 2012, and confirmed that Oliver would pay the Detective to kill the victim. This meeting was audio and video recorded. Shortly after this meeting uniformed officers arrested Oliver. Defendant was convicted of Attempted First Degree Murder and Aggravated Assault. He was sentenced to 10 years in DOC followed by four years probation.

**Strike Force:** "Quest" is an informal Task Force comprising of the AGO, Arizona Department of Economic Security, Office of Special Investigations, United States Department of Agriculture, Office of Inspector General and Phoenix PD. The group has worked together now for nearly three years: identifying stores that defraud the USDA Supplemental Nutritional Assistance Program (SNAP) by buying benefits at about 50 cents on the dollar from recipients. In this last year, the Strike Force also conducted undercover operations in areas of Phoenix where there was significant trafficking in SNAP benefits as well as drug sales, illicit as well as prescription drugs, among recipients. This past fiscal year, this operation was able to indict 37 Defendants. Typically these Defendants are charged with multiple offenses ranging from Unlawful Use of Food Stamps, up through Computer Tampering and Money Laundering and Fraudulent Schemes and Artifices. To date, 21 of these Defendants have plead guilty and have been sentenced. Collectively they have been ordered to pay restitution in the amount of \$7,122 and fines totaling \$17,065.

**State v. Leonard Costigan:** Defendant was charged with Possession of Dangerous Drugs for Sale, Possession of Narcotic Drugs, Misconduct Involving Weapon and Possession of Drug Paraphernalia. Detectives were tipped off that the Defendant, a convicted felon and a member of the Arian Brotherhood, had a semi-automatic weapon in his house. A search warrant was executed and the firearm was discovered along with methamphetamine packaged for sale. The Defendant plead guilty to Attempted Possession for Sale of a Dangerous Drug, with one prior felony conviction. Defendant was sentenced to 7.5 years to the Department of Corrections and ordered to pay a \$1,000 fine. In addition, Defendant plead guilty to Misconduct Involving Weapons and was sentenced to 4.5 years in the Department of Corrections, sentences to run concurrently.

**State v Graydon Peeples:** The Defendant was engaged in identity theft. He was arrested three times and each time he possessed the identifying information of numerous individuals on flash drives, computers, spreadsheets, or stolen driver's licenses and passports. He entered a plea on each of his three cases. He pleaded to one count of Aggravated Taking Identity of Another, with one prior, on two of the cases. On each of these he was sentenced to 6.5 years DOC concurrent and on the third case he plead to one count of weapons misconduct without a prior for which he was given a probation tail.

## **IX. Health Care Fraud & Abuse Section (HCFA):**

**Stephen Duplissis, Section Chief**

HCFA investigates and prosecutes health care fraud crimes that impact the State's billion dollar Medicaid program known as AHCCCS. In addition, this Section is charged with investigating allegations of abuse and neglect that take place within health care settings that are at least partially funded by the State's AHCCCS program. HCFA investigates and prosecutes cases involving the falsification of medical records and the filing of false or inflated Medicaid billing claims; thefts and embezzlements from AHCCCS clients and health care institutions; the illegal diversion of prescription drugs by health care providers; and the physical, sexual, and emotional abuse of residents being cared for in AHCCCS-funded facilities.

The HCFA staff has continued to achieve an increase in case referrals from local and county law enforcement agencies, as well as from the state's health care regulatory agencies. It is our belief that the substantial increase in the number of Defendants that we have criminally charged in the past several years is directly attributable to the success of our outreach efforts.

This successful case referral and case harvesting process is particularly evident in the Tucson office where a unique state and local partnership has been forged. The Tucson Police Department leaders have

assigned two of their experienced elder abuse crimes detectives to work within the Attorney General's Tucson HCFA office. As a result of these two detectives being located within the Attorney General's Office, they are afforded the same opportunity that our agents have in terms of working hand-in-hand with the prosecutor from the point that their case is opened until the matter is adjudicated. Moreover, the local agency investigators have learned that if their fraud or abuse case has the requisite Medicaid nexus, their case will be handled by the seasoned Tucson prosecutor who has a well deserved reputation for always being available for case development consultation and for her ability to move the referred cases expeditiously and aggressively. It is also noteworthy that the Pima County Sheriff's Office Elder Abuse Detectives have been bringing an increasing number of vulnerable adult crime cases to the Tucson office.

It has been through the excellent collaborative work of the Tucson Police Department detectives, the Pima County Sheriff's detectives, and the HCFA Tucson office personnel that a large number of serious physical abuse and financial exploitation cases continue to be successfully prosecuted. A number of these cases involved the coordinated response of both regulatory agencies and the law enforcement partners our Section works with. It should be noted that the single greatest factor in the successful prosecutions that this group has brought about is their single minded devotion to the mission of protecting this vulnerable population from the criminals who have sought employment in the health care field for the access it gives them to our most vulnerable citizens. The case summary section of this annual report contains some excellent examples of the work that has been done by this group in pursuit of this mission.

i. **Overview of Accomplishments:**

HCFA received 159 allegations/complaints regarding fraud, misuse of funds, and patient abuse in AHCCCS funded health care programs and facilities. Following a preliminary investigation, 126 of these new cases were opened for a full investigation with 88 being categorized as fraud cases, 15 as patient abuse cases and 23 as financial exploitation cases. This Section charged a total of 85 Defendants and sentenced 52 Defendants. In addition, the court ordered restitution to be paid to victims in the sum of \$505,286. Also, HCFA participated in 51 outreach presentations to assist in the detection, investigation and prosecution of crimes committed in the Medicaid program.

HCFA continues to work collaboratively with our federal law enforcement partners, including the Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); and most frequently with the Department of Health and Human Services' Office of Inspector General (HHS-OIG). These collaborative efforts have been essential in combating the widespread problem of health care frauds related to prescription drug crimes.

HCFA personnel regularly attend meetings of the Maricopa Elder Abuse Prevention Alliance (MEAPA), Fiduciary Abuse Specialist Team (FAST), Arizona Financial Exploitation Committee, International Association of Financial Crimes Investigators, Arizona State Elder Abuse Prevention Coalition, United States Attorney's Health Care Fraud Task Force, Yavapai County Partners Against Narcotic Trafficking (PANT), Yavapai County Prevent Elder Abuse Coalition, Coconino County Drug Task Force, and Adult Protective Services/Area Agency on Agency Response Team.

ii. **Major Cases:**

**State v. Christopher Joseph Lopez:** In February, 2012 a Pima County Sheriff's Deputy was summoned to the University Medical Center regarding a disabled adult female who arrived via ambulance for emergency medical treatment. The 41 year old female victim was found to have open bedsores, an infection, and was suffering from dehydration and complications due to diabetes and malnutrition. It was learned that the victim was an in-home care client of Comfort Keepers In-Home Care Services, a Medicaid certified provider. It was further determined that Comfort Keepers had hired and was paying Medicaid funds to the victim's live-in boyfriend, Christopher Joseph Lopez, for him to provide care to the victim in her Tucson home.

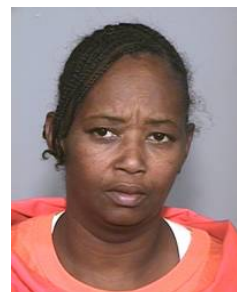


The victim estimated that she had been lying on the floor of her mobile home for between four days and two weeks, without much food or care. Lopez was interviewed and admitted that he was not caring for the victim because she was aggressive and would not allow him to service her personal needs. Lopez further admitted he never reached out for additional assistance or consulted with Comfort Keepers to deal with the victim's needs. On June 14, 2012, Lopez was charged with two counts of Vulnerable Adult Abuse, Domestic Violence. Lopez pled guilty and was sentenced to 1.5 years in the Department of Corrections. He was also ordered to pay restitution to the Arizona Medicaid program for the victim's medical bills in an amount not to exceed \$250,000. Lopez was also ordered to pay attorney's fees in the amount of \$400.00 and investigative costs in the amount of \$1,000. The victim is presently being cared for in a Tucson assisted living facility.



**State v. Jodie Leeanne Cox:** Jodie Leeanne Cox was employed as a Medical Assistant working in a Prescott Valley doctor's office. An investigation developed evidence that Cox had used her position as a Medical Assistant to forge prescriptions which resulted in her illegally obtaining approximately 15,000 Hydrocodone pills. The investigation was worked jointly with the Yavapai County Partners Against Narcotics Trafficking Taskforce, the Yavapai County Prescription Drug Taskforce, and the Yavapai County Attorney's Office. Cox was charged with eight counts of Fraudulent Schemes and Artifices and 126 counts of Acquisition of a Narcotic Drug by Fraud. Cox pled guilty to five counts of Fraudulent Schemes and Artifices and was sentenced to five, three year sentences, all to run concurrently.

**State v. Lisa Marie Boone-Scott:** Boone-Scott was employed as a Medical Assistant at Second Horizons Adult Care Home, an AHCCCS funded care facility in Pima County. Her duties included caring for a 91 year old resident of the home. An investigation developed evidence that Defendant had the resident sign checks to her, telling the victim that the money was needed for the resident's hearing aids. In addition, evidence was developed that Boone-Scott had used the victim's ATM card to make unauthorized cash withdrawals. Boone-Scott was charged with Fraudulent Schemes & Artifices, Theft/Financial Exploitation of a Vulnerable Adult, and Forgery. Defendant pled guilty to Forgery and was sentenced to 2.5 years in the Department of Corrections. She was ordered to pay restitution in the amount of \$4,171 and investigative costs in the amount of \$500.00. Boone-Scott had been convicted in California for a similar offense in 2000.



**State v. Julia Ann Sparavec:** Nurse imposter, Julia Ann Sparavec, was charged with several counts of Fraud Schemes and Forgery. Between April, 2012 and August, 2012, Sparavec had obtained employment at two separate eye clinics by falsely claiming that she was a Registered Nurse. Sparavec was also on probation at the time of the alleged offenses for her previous convictions growing out of committing prescription drug diversions at dental offices. Defendant pled guilty to two counts of Forgery and was sentenced to 4.5 years in the Department of Corrections, which will be followed by three years probation. Defendant was also ordered to pay investigative costs of \$2,500.

## **X. Office of Victim Services (OVS):**

**Kirstin Flores, Director**

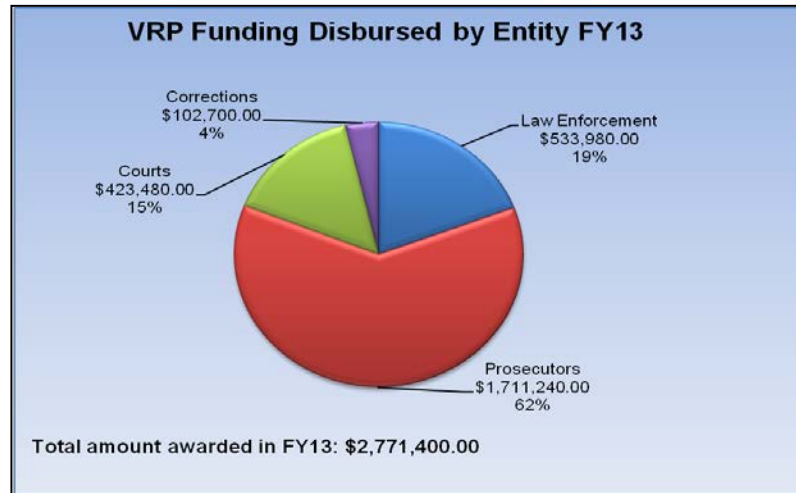
The mission of the OVS is to promote and facilitate justice and healing for people affected by crime in Arizona. OVS provides a variety of services to victims in cases in which the State is represented by the AGO. In addition, OVS provides financial and technical support to state, county and municipal law enforcement, custodial, prosecutorial, correctional agencies, and courts, both adult and juvenile, having duties and responsibilities established by Arizona's victims' rights laws.

### **i. Overview of Accomplishments:**

OVS continues to provide services to victims of various crimes in cases prosecuted by the AGO as well as to those cases on direct review or under capital appeal. In FY 2013, advocates provided services to more than 10,271 victims. The office also received and investigated 47 complaints of violations of rights and

audited 17 agencies. Grants from the Victims' Rights Program totaling \$2,771,400.00 were used to support 56 criminal justice agencies and 38 victims' rights trainings were provided to more than 946 professionals statewide.

The Office of Victim Services continues to participate and serve as a leader state-wide on victims issues. Included in such activities is the participation of staff in the National Victims' Rights Week celebration. For the 2013 event, the Attorney General's Office collaborated with the Department of Corrections, Department of Juvenile Corrections, Maricopa County Attorney's Office, Arizona Prosecuting Attorneys' Advisory Council (APAAC) and the Arizona Governor's Office to recognize individuals in Arizona who made significant contributions to victims' rights. The Attorney General personally recognized 6 outstanding individuals who have made significant contributions towards Victims' Rights in front of approximately 350 attendees.



ii. **Major Cases:**

Many of the successfully prosecuted cases outlined previously by other Sections in this report were also supported by advocates in OVS. victims.

**State v. David House:** An OVS advocate assisted a victim through the appeal process of a cases involving a Defendant with charges of Attempted Trafficking in Stolen Property in the Second Degree. The Defendant was sentenced to probation for this charge, and then failed to complete the drug ordered treatment program, which was a condition of his probation. The Court revoked the Defendant's probation, and sentenced him to 2.5 years in the Department of Corrections. The basis of his appeal was that the drug treatment program was federally funded, and the motion to revoke probation identified him as a patient in the drug treatment program, which he alleges violated his rights to privacy. The Arizona Court of Appeals, Division 1, affirmed the revocation and the sentence of imprisonment on January 17, 2013. The Defendant failed to appeal further and the Order and Mandate was filed on March 4, 2013. The advocate and victim had extensive contact in this case. Written notification, always accompanied by a phone call, was sent when significant case activity occurred. At her request, the advocate provided the victim with copies of the filed briefs as well as a copy of the decision issued by the Arizona Court of Appeals, Division I. The advocate routinely provided case information and emotional support during phone conversations with the victim who continues to process her victimization and the emotional aspects that go along with being a victim. In addition, the advocate identified the victim's needs and assisted with resources. The advocate also assisted with facilitating communication between the Department of Corrections and the County Attorney's Office to determine whether the Defendant will continue on probation after completion of his prison sentence. On the Victim Satisfaction Survey (VSQ) returned by the victim she wrote, "Without victim services and especially my advocate...I would have been totally in the dark about the appeal process. As far as I'm concerned, the aid provided by victim services and advocates alike are essential to victims who feel as though no one cares about us."

**State v. James Della-Giustina:** An OVS advocate assisted a victim that had been shot three times by the Defendant at a house party. As the Defendant fled the scene, he was severely assaulted by other party goers and witnesses. He was hospitalized and slipped into a coma; as a result, the Defendant had amnesia regarding the shooting, making him incompetent to stand trial. The prosecutor was determined to try and reach a non-trial resolution to the case. Shortly before an Evidentiary Hearing was scheduled, the persistent prosecutor and the defense team negotiated a plea with a stipulated probation sentence with a jail term. Due to the nature of the crime and the looming threat of a possible dismissal of the case, the victim and his mother were very emotional, yet passionate about seeking justice. The advocate worked closely with the mother, who was designated as the victim's lawful representative. The victim, his mother and the advocate attended every hearing. Additionally, the advocate provided assistance with writing a victim impact statement, assisted the mother in making a claim with the Victim Compensation Fund, and had frequent contact with the Mental Health Coordinator in order to research amnesia-related competency issues. The mother greatly appreciated the advocate's assistance through the "many obstacles and loopholes we encountered." She wrote of her son "[He] was unhappy, angry and had increased anxiety from the time of the incident and throughout the court proceedings. Getting a conviction and, especially seeing the Defendant handcuffed and being taken into custody really helped [him] begin healing. Thank you from the bottom of my heart for giving me my son back."

### 2013 Distinguished Service Award – Leadership

Attorney General Horne presents to the following awards to this year's recipients during National Victims' Rights Week.



**Ms. Donnalee Sarda**, Executive Director, Defenders of Children  
*2013 Distinguished Service Award – Advocacy/Direct Services*



**Ms. Sonja Gonzalez**, Executive Director, Northland Family Help Center  
*2013 Distinguished Service Award – Service Coordination*



**Lieutenant Robert Bates**, Phoenix Police Department, Family Investigations Bureau  
*2013 Distinguished Service Award - Innovative Practices*





**Mr. Robert Quan and Ms. Terry DenDulk**  
**2013 Distinguished Service Award – Public Policy**



**Ms. Iva Rody**, Victim Advocate, El Mirage Police Department  
**2013 Distinguished Service Award – Leadership**

**XI. Special Investigations Section (SIS):**

**Andrew Rubalcava, Section Chief**

SIS provides investigative support to prosecutors in the Attorney General’s Office as well as to law enforcement agencies throughout the State. SIS employs Special Agents who are state-certified peace officers as well as forensic auditors and analysts with specialized experience and training to conduct complex investigations. SIS conducts investigations relating to public corruption, financial fraud, consumer and mortgage fraud, Medicaid fraud and abuse, environmental crimes, drug and human smuggling and foreign prosecution and extradition in civil litigation and criminal prosecutions.

**i. Overview of Accomplishments:**

During FY 2013, the SIS was able to replace vacancies created by retirements and expanded the Section by four sworn positions. However, due to continuous personnel turnover, SIS remains challenged to maintain highly specialized investigative expertise to meet increasing investigative demands. SIS Major Fraud units devoted significant resources to advance priority sensitive public corruption cases. SIS Agents supporting the Fraud and Special Prosecutions Section, Financial Remedies Section, Health Care Fraud and Abuse Section, Consumer Fraud Section and Tucson Crimes Section were extremely successful in meeting unprecedented investigative demands.

AGO initiatives continue to target the dismantling of the financial structures of drug trafficking organizations, and continue to result in record setting increases in asset forfeitures. Statistics also clearly indicate calls for assistance from the public (duty calls) and other law enforcement agencies remain at a high level.

- Law Enforcement Assists 1341
- Law Enforcement Training Presentations 84
- Duty Agent Contacts 2300



Recovered near I-8/Gila Bend  
 in the desert  
 1/2 ton (1000 lbs) of Marijuana  
 No arrests, just a staging location

**ii. Major Cases:**

Many of the successfully prosecuted cases outlined previously by other Sections in this report were also investigated by the Special Agents assigned to the Special Investigations Section.

**State v. Purchase Power Solutions:** In October, 2012, CPA Agents were involved in a joint operation with the FTC, which involved the serving of a Temporary Restraining Order against the Defendants and their related businesses including, Purchase Power Solutions. In conjunction with the TRO, a consumer fraud action alleging numerous violations of the Consumer Fraud Act was filed. Since 2006, these Defendants

allegedly defrauded consumers nationwide out of millions of dollars. The scheme involved the use of pre-recorded telephone messages that were used to initiate call to consumers. These sales calls offered consumers the chance to lower their credit card rates, but these results rarely received. Consumers actually received a computer generated payment plan that simply demonstrated they could save money by making higher monthly payments to their highest interest rate credit cards. In April, 2013, a \$1.6 million Default Judgment was entered involving several of the named Defendants in this matter.

**State v. Solid Ad Solutions:** In December, 2012, a \$10.5 million Default Judgment was entered on behalf of the State in the matter involving Solid Ad Solutions. In January, 2013, an additional \$300,000 Default Judgment was entered against an additional Defendant in this matter. The initial filing of the Consumer Fraud action occurred in November, 2011. The allegations at the time were that the Defendants had defrauded nearly \$6 million from consumers while operating under numerous business names. The Defendants had offered to set up consumers with an internet business where they were promised commissions on products bought through their website. Consumers never recouped their investments or made commissions nearing the amount promised.

**State v. Sun Valley Towing:** As a result of a Consumer Fraud Action being filed against Sun Valley Towing and its owners, a Consent Judgment was reached in the matter in May, 2013. The agreement called for \$686,582 to be awarded in civil penalties and restitution. The Consent Judgment also includes a permanent injunction prohibiting Tim and Rosemary Kunselman from engaging in auto repair and tow operations. This settlement resulted from an undercover operation undertaken by CPA Agents that was conducted in January, 2012.

**State v. Jacqueline F. Macias:** Jacqueline F. Macias was employed as the business manager at a Phoenix nursing home where it was discovered that she had altered the patients' trust fund accounting records and diverted \$80,352.65 in trust fund monies for her own benefit. Macias was charged with Fraudulent Schemes and Artifices, Theft and 51 counts of Forgery. On May 17, 2013, Macias pled guilty to Theft and was sentenced to five years probation with the first 30 days to be spent in the Maricopa County Jail. Macias was also ordered to pay restitution in the amount of \$80,352.65 to the nursing home where she was employed because the home had reimbursed the patient's trust fund account. Macias was also ordered to pay \$5,000 in investigative costs.

**State v. Korri Michelle Glynn & Veronica Gomez Tello:** An insurance company reviewer contacted a Marana, Arizona doctor to inform him that pharmacy billing records indicated that one of his patients appeared to be being prescribed a dangerous amount of Hydrocodone. The doctor checked and determined that someone had been calling in phony prescriptions by using the identity of one of his elderly patients and also using the doctor's name and DEA number as the prescribing physician. The HCFA investigation developed information indicating that a former employee of the doctor's office named Korri Michelle Glynn had called in the phony prescriptions that were then being picked up by her friend, Veronica Gomez Tello. The HCFA investigation also developed additional allegations about caregiver Tello in which it was alleged that Tello was, without permission, cashing personal checks that belonged to the patient that she was providing care to and whose name they had originally used to get phony prescriptions passed. On April 19, 2012 Defendants were indicated on one count each of Fraudulent Schemes and Artifices and three counts each of Acquisition of Narcotic Drug by Fraud. In addition, Tello was charged with four counts of Forgery and Theft/Financial Exploitation of a Vulnerable Adult. Glynn pled guilty to the charge of Solicitation to Possess a Narcotic Drug and was sentenced to three years of probation and ordered to pay attorneys' fees in the amount of \$400.00 and investigative costs in the amount of \$1,000. Tello pled guilty to Trafficking in Stolen Property, Second Degree and was sentenced to six weekends in the Pima County Jail, five years probation, ordered to pay restitution of \$17,000 to the victim, and ordered to pay attorneys' fees of \$400.00.

**State v. Petra Gunst Mitchell:** Ms. Petra Mitchell was employed as the Financial Manager at a behavioral health outpatient clinic in Tucson, Arizona. An investigation determined that Mitchell had used the corporate account of the agency to pay her personal bills. An audit of the accounting records indicated that Mitchell misappropriated \$82,575.48 in corporate funds. Defendant was charged with Fraudulent Schemes and Artifices, Forgery, and Theft. Mitchell pled guilty to the charge of Attempted Theft with a Value of More Than \$25,000 and was sentenced to four years probation, ordered to pay restitution in the amount of \$82,575.48 to the agency she defrauded, ordered to pay attorneys' fees in the amount of \$400.00, and investigative costs in the amount of \$1,000.

**State v. John MacDonald:** John MacDonald submitted false lobbyist disclosure forms, which indicated the Fiesta Bowl did not make any expenditure for legislators. These forms were filed for calendar years 2005-2010, and had the effect of covering up large gifts made by the fiesta bowl to legislators. MacDonald pled guilty to a misdemeanor charge of Failure to Report Principal Expenditures, stemming from a 2008 trip to Boston that included nine legislators.

**State v. Empowerment Scholarship Account:** Between August 1, 2011 and November 29, 2011, Defendant accepted Empowerment Scholarship assistance on behalf of her disabled children. Torres, with three children, misspent the funds per limitations set in A.R.S. § 15-2402. She purchased items with the spending cards issued to her by Arizona Department of Education (ADE) that would appear to qualify as a legitimate purchase, and then subsequently returned the items for a refund, typically in the form of a store gift card, which was then used to purchase items that would not qualify for the funds per statute. This misspending was first discovered in October 2011 by ADE and she was coached and counseled on appropriate expenditures. However, Torres continued to misuse the ADE funds. Torres pled guilty to a misdemeanor charge of Theft.



**State v. Pacific Data Centers:** Pacific Data Centers' Branch Manager Michelle Burrell contracted with the Arizona Department of Revenue to provide data entry services for Arizona tax returns. Some of the data entry was outsourced to a vendor in Minnesota who used data entry employees based in India, which is in violation of the contract and State Law. Michelle Burrell pled guilty to Illegal Disclosure of Confidential Information and was sentenced to 18 months probation and was ordered to pay fines and surcharges of \$100,000. Pacific Data Centers and its parent company, Tricom, pled to Illegal Disclosure of Confidential Information and agreed to pay a \$500,000 fine.

**State v. Elizeta Wade:** Elizeta Wade charged up front fees to conduct home loan modifications from several victims. She made guarantees to refund victim money if the home loan modification was not awarded. Wade did not contact any of the mortgage lenders on behalf of her clients to request home loan modifications. Instead, she used the monies received from the clients, which became victims, for her own personal benefit. Elizeta Wade was charged with Fraud Schemes and Artifices, Theft and Forgery for being an unlicensed realtor. Defendant pled guilty to Fraud Schemes and Artifices and Forgery and was sentenced to three years in the Department of Corrections, followed by a five years of supervised probation and ordered to pay \$19,105 in restitution.

**State v. Jacques L. Davis:** Jacques L. Davis defrauded the State of Arizona, Governor's Office of Economic Recovery, by filing for and receiving a \$250,000 grant. Davis created a new company, AT Security Services, which he touted as a large, successful California company looking to relocate to Scottsdale. To keep up with the scheme, Davis signed a lease for a large office space in Scottsdale which he obtained by falsifying the lease application. Once the lease was approved, he gave tours to the State Auditors. Davis made the local newspapers and then met with the Mayor of Scottsdale to further his scheme. Once Davis was awarded the \$250,000 grant, he abandoned his office space in Scottsdale. After employees blew the whistle on him, he was asked by State Auditors to provide additional proof of his alleged company in California. Davis provided the auditors with falsified employee files which contained stolen Social Security numbers. Jacques L. Davis pled guilty to Illegal Control of an Enterprise and Theft and was sentenced to 2.5 years in prison followed by probation. He was also ordered to pay restitution of \$250,000 to the State of Arizona and \$493,756 to Desert Troon Companies, the landlord of the Scottsdale office space he rented.



**TOM HORNE**  
ATTORNEY GENERAL

**OFFICE OF THE ARIZONA ATTORNEY GENERAL**  
**PUBLIC ADVOCACY AND CIVIL RIGHTS DIVISION**

**THOMAS K. CHENAL**  
CHIEF COUNSEL

## **FY2013 ANNUAL REPORT**

APPENDIX 1 OF **APPENDIX C**

### **CONSUMER PROTECTION AND ADVOCACY SECTION**

#### **OVERVIEW**

The mission of the Consumer Protection & Advocacy Section is to protect the public from consumer fraud, antitrust and anti-competitive conduct; provide advocacy and public education regarding consumer protection issues with an emphasis on fraud and abuse; enforce tobacco laws and protect youth from exposure to tobacco products; and provide legal advice and representation to client agencies. The Consumer Protection and Advocacy Section is comprised of the Consumer Litigation Unit (with offices in both Phoenix and Tucson), the Consumer Information and Complaints Unit, the Agency Unit, the Tobacco Enforcement Unit and the Antitrust Unit.

Attorney General Horne's hallmark achievements in consumer protection during fiscal year 2013 include:

- Continuing to fight mortgage fraud and ensure compliance with the National Mortgage Settlement,
- Seizing assets of companies that sell bogus "business opportunities" to seniors and others,
- Coordinating the AGO's civil and criminal law enforcement efforts to protect seniors through the Task Force Against Senior Abuse,
- Conducting successful undercover operations at auto repair shops to keep businesses honest;
- Diligently enforcing the tobacco Master Settlement Agreement and settling outstanding claims, bringing in an additional \$50 million for the State,
- Keeping cigarettes away from kids, by promoting a new law outlawing e-cigarette sales to minors,

- Promoting competitive business practices and ensuring compliance with school procurement laws,
- Drafting and successfully advocating for an amendment to the Consumer Fraud Act to make unlawful unfair acts and practices, and to authorize the disgorgement of ill-gotten gains as an additional remedy under the Act.

## **ACCOMPLISHMENTS**

### **I. CONSUMER LITIGATION UNIT**

The Consumer Litigation Unit (“CLU”) enforces the Arizona Consumer Fraud Act, as well as other state and federal consumer protection laws. The Consumer Fraud Act prohibits deceptive, misleading and now unfair business practices in connection with the sale and advertisement of merchandise. Based largely on written complaints from consumers, CLU investigates potentially unlawful practices. When violations of law are found, CLU pursues civil remedies which may include obtaining restitution for consumers, injunctive relief to prohibit the unlawful conduct from recurring in the future, and civil penalties. Last year, the Attorney General represented the State of Arizona in a broad range of both local and national consumer fraud matters, including mortgage fraud, telemarketing cases, health care fraud, automobile-related cases, and data security and privacy matters.

#### **Implementing the National Mortgage Settlement**

In 2012, an historic joint state-federal settlement was reached between Arizona and 48 other states, the federal government and the country’s five largest residential mortgage loan servicers—Ally/GMAC/Residential, Bank of America, Citibank, JPMorgan Chase and Wells Fargo. The settlement was estimated to provide as much as \$25 billion in relief to distressed borrowers and direct payments to states and the federal government. It is the largest civil settlement reached by the Attorneys General since the tobacco settlement. Arizona’s share was estimated at \$1.3 billion.

The agreement settled state and federal investigations finding that the country’s five largest loan servicers engaged in unacceptable and sometimes fraudulent mortgage servicing and foreclosure practices. The settlement required the five banks to adopt new servicing standards by October, 2012.

Arizona is one of fourteen states on the Monitoring Committee of the National Mortgage Settlement. The Monitoring Committee works with Joe Smith, the Monitor, to ensure compliance with the settlement. In 2013, the Arizona Attorney General and the Monitoring Committee achieved the following:

- After rigorous testing, the Monitor reports that the banks passed those tests that ensure they no longer engage in the practice of robo-signing – signing off on

foreclosure documents with little or no review. The report also confirms that the five banks have stopped charging distressed borrowers a fee just to process a loan modification request and are adhering to proper customer payment processing procedures.

- Arizona and other states on the Monitoring Committee developed a training program for housing counselors on the National Mortgage Settlement.
- As of May, 2013, the banks have reported providing a gross total of \$1.833 billion in consumer relief for Arizona borrowers; \$627.8 million was in the form of first and second lien principal reduction with an additional \$223 million in the pipeline for borrowers in trial payment plans.
- Almost 65,000 Arizonans who had their primary residence foreclosed upon received payments totaling \$96.5 million.
- The Attorney General's Office is also administering a \$57 million program to provide relief to Arizona homeowners using funds from the settlement.
- As a result of a separate settlement with Bank of America, severely distressed borrowers received an additional \$7.89 million in relief from that bank.
- Attorney General Horne established a dedicated phone line and e-mail address to answer questions related to the National Mortgage Settlement. {Phoenix area- (602) 542-1797; Outside Phoenix- 1-855-256-2834, [mortgagefraud@azag.gov](mailto:mortgagefraud@azag.gov) } In fiscal year 2013, the Attorney General's Office answered 2,928 consumer phone calls and 1,963 e-mails about the national settlement and related mortgage fraud issues.

Although the national mortgage settlement has brought over \$2.217 billion in homeowner relief for Arizona consumers, there is still work to be done. As part of the Monitoring Committee, the Attorney General will continue to work to ensure that the servicers subject to the National Mortgage Settlement fully comply with the terms of the Settlement. Should the servicers fail to comply with the new standards, the Attorney General has the ability to seek up to \$1 million per violation in civil penalties and \$5 million for repeated failures.

### **Bank of America Settlement**

In 2012, the Attorney General also announced a settlement with Bank of America, resolving a consumer fraud lawsuit filed in December, 2010. This separate agreement required the bank to pay \$10 million to the Arizona Attorney General and to retain an unaffiliated third-party to maximize the response rate for loss mitigation programs, among other things. In 2013, Bank of America engaged a non-profit, HUD approved

housing counseling agency to work directly with borrowers who may be eligible for the Hardest Hit Fund, run by the Arizona Department of Housing, and other loss mitigation programs. Bank of America began sending a co-branded mailing with the Arizona Department of Housing to increase participation in these programs. The mailings began in June, 2013 and are expected to reach more than 15,000 Arizona borrowers upon completion. The AGO will continue to monitor and measure the results of these and other initiatives that have been undertaken in connection with the Bank of America settlement.

### **Protecting Consumers from Mortgage Fraud and Loan Modification Scams**

The Consumer Litigation Unit (“CLU”) continued to prosecute foreclosure rescue and loan modification companies that target vulnerable borrowers this year. Here are a few examples:

- *State of Arizona v. The Mortgage Law Group (“TMLG”)*: The State obtained a consent judgment against TMLG, an Illinois-based law firm, stemming from a lawsuit that alleged numerous violations of the Consumer Fraud Act in TMLG’s marketing and sale of mortgage modification services. The judgment prohibits TMLG from engaging in any activity involving the modification of mortgages or any other type of consumer debt, either in Arizona or on behalf of any Arizona consumer. The judgment also requires TMLG to pay full restitution (\$40,000) to those consumers who filed a complaint with the Attorney General’s Office and who were not previously reimbursed under an earlier settlement with co-Defendant Underwater Property Solutions. TMLG was also ordered to pay \$60,000 as costs and fees.
- *State of Arizona v. La Paz Source, LLC & La Placita Multi Services, LLC (“La Paz”)*: La Paz, was an Arizona LLC who held themselves out to the public as foreclosure consultants. La Paz, based in Tucson, charged very large up-front fees, in violation of Arizona’s Foreclosure Consultant laws, and then failed to provide the foreclosure consultant services required to earn those fees. In some cases, the consumer lost his or her home in the process. The State obtained a default judgment against all Defendants on April 2, 2013. The judgment requires Defendants to pay \$26,498.50 for attorney’s fees and costs, \$71,743.34 in consumer restitution, plus a civil penalty of \$270,000. The judgment further prohibits Defendants from violating the Consumer Fraud Act, engaging in any business activity to, into, or from the State of Arizona that requires licensure by the Arizona Department of Financial Institutions, and from selling or transferring any interest in the business entities without prior approval of the Arizona Attorney General’s Office.

- *State of Arizona v. Making All Homes Affordable (“MAHA”)*: A consumer fraud lawsuit was filed against MAHA, a company that marketed and sold a “software” program to primarily Spanish speaking clients seeking modifications to their mortgage loans. The complaint alleged that MAHA misrepresented the nature and value of MAHA’s program, that it used fake testimonials on its website, and that it deceptively charged consumers a “tax”, when MAHA did not possess a privilege transaction tax or remit the “tax” to any lawful taxing authority. A consent judgment was filed which prohibits Defendants from originating, closing or modifying any term of a consumer’s mortgage loan or any other type of consumer debt. Defendants also agreed to pay \$20,000 for consumer restitution and attorneys’ fees and costs.
- *State of Arizona v. Rosa Galope*: CLU filed an action against Rosa Galope after having received several complaints from consumers who paid the Defendant significant sums of money for assistance in obtaining a mortgage modification and, in some cases, for assistance facilitating the re-purchase of their homes after a short sale transaction. In each case, the Defendant allegedly failed to provide the promised services and failed to refund consumers’ money. A consent judgment requires Ms. Galope to provide full restitution to consumers, enjoins her from providing any services in Arizona or on behalf of any Arizona consumer that involve originating a mortgage or modifying the terms of a mortgage, or of purchasing, leasing or selling real estate for any third-party. The judgment also requires Ms. Galope to pay penalties and fees and costs.

The Attorney General also filed suit against companies whose practices allegedly contributed to the mortgage and foreclosure crisis in Arizona and nationwide.

- *State of Arizona v. Standard & Poor’s Financial Services, LLC (“S&P”)*: In February, 2013, Attorney General Horne filed a consumer fraud lawsuit against Standard & Poor’s and its parent company, McGraw Hill. The complaint alleges misconduct involving structured finance securities backed by subprime mortgages that were at the heart of the nation’s financial crisis. According to the complaint, S&P violated the Consumer Fraud Act by misrepresenting the independence and objectivity of its securities ratings. Despite its representations of neutrality, S&P allegedly allowed revenue considerations to influence the analytical models it used to ultimately assign high ratings to many securities that turned out to be virtually worthless. The U.S. Department of Justice and 15 other states also sued. The case is now in litigation.
- *State of Arizona v. Lender Processing Services, Inc. (“LPS”)*: In February, 2013, Arizona joined a \$120 million multistate settlement resolving an investigation of the foreclosure practices of LPS and related companies. The lawsuit, filed with



the consent judgment, alleged that LPS signed mortgage related documents without verifying the accuracy of the information contained in the documents, forged the signatures of bank officers on mortgage documents -- a practice LPS called "surrogate signing" -- and improperly notarized forged documents. Among other things, the consent judgment prohibits LPS from the "surrogate signing" of documents or notarizing documents that were executed outside the presence of a notary. It also requires LPS to modify mortgage documents that require remediation when LPS has legal authority to do so and when reasonably necessary to assist a consumer. LPS must also maintain toll-free phone numbers for consumers concerning document execution and property preservation services. As a result of the settlement, LPS paid the Attorney General's Office approximately \$3.7 million.

### **Business Opportunity Fraud, Telemarketing, and Do Not Call Violations**

In 2012, the Attorney General successfully backed legislation to regulate the sale of business opportunities in Arizona. Under the new law, any company or individual who sells business opportunities or conducts any advertising or other services associated with business opportunities must:

- File an annual registration with the Arizona Secretary of State that identifies the principals of the business and provides their previous history in the industry,
- Maintain a \$100,000 bond with the Arizona State Treasurer, proceeds of which would be payable to consumers who are defrauded by the seller,
- Provide specific, written disclosures to potential purchasers before a business opportunity is sold,
- Give each consumer-purchaser a written contract, and
- Provide consumers with a ten day "cooling off" period after the contract is signed.

House Bill 2825 took effect in August, 2012. To promote compliance, the CLU notified telephone solicitors and attorneys who represent them of the new requirements before the law took effect. The Attorney General's Office is beginning to receive complaints from consumers who purchased business opportunities since the effective date of the statute and did not receive the mandatory information and disclosures. Additionally, all telephone solicitation registrations that are filed with the Arizona Secretary of State are being reviewed to identify telemarketers of business opportunities. The names of these businesses are cross-checked with other records to identify potential violators. Several investigations involving these businesses are currently underway and additional enforcement actions are expected next year.

In 2013, the Attorney General filed a number of business opportunity and telemarketing fraud cases, including:

- *State of Arizona v. Chelliah, et al.*: CLU filed a lawsuit in June, 2012 against 26 Defendants alleging violations of the Consumer Fraud Act, the Arizona Telephone Solicitation Act and civil racketeering statutes in the telemarketing of business opportunities. The suit alleged that Defendants telephoned primarily elderly consumers, encouraging them to invest substantial sums of money in work-at-home business opportunities. Defendants used high-pressure sales tactics and false income claims to convince consumers to purchase websites through which they could sell merchant processing services. After selling the website, Defendants persuaded consumers to invest thousands of dollars into the marketing of their websites. The Attorney General's Office received approximately 500 complaints from consumers who conducted business with the Defendants. Additionally, CLU subpoenaed financial records from numerous banks, credit unions and payment processors which were reviewed by accountants on staff at the Attorney General's Office. Those records laid the foundation for the restitution and civil penalty awards found in the default judgment. The default judgment includes an order for payment of restitution in the amount of \$26,268,701 which was the monetary amount paid to the defaulted Defendants by consumers. Two hundred and forty-eight consumers filed complaints against the defaulted Defendants. The default judgment includes a civil penalty of \$10,000 per violation, totaling \$2,480. Litigation against the remaining Defendants continues.
- *State of Arizona v. Superior Marketing Group; LLC, Streamline Online, LLC*: These companies operated a telemarketing business purported to sell home based internet business opportunities. The State obtained consent judgments against the companies and their principals after obtaining a preliminary injunction which froze approximately \$400,000 of their assets. The consent judgment ordered transfer of those assets to the Attorney General's Office. The consent judgment provides for payment of consumer restitution and enjoins the Defendants from engaging in the advertising or sale of "business opportunities" in Arizona, or to Arizona consumers and requires the Defendants to maintain the confidentiality of consumer's personal information that they obtained during the course of their alleged illegal activities.
- *State of Arizona v. Solar Bear, LLC ("Solar Bear")*: The Attorney General's Office obtained a consent judgment against Solar Bear stemming from a lawsuit that alleged that the company violated Arizona's telemarketing laws by telephoning consumers whose telephone numbers were on the national Do-Not-Call list. The judgment ordered Solar Bear to pay \$35,000 as civil penalties and \$5,000 as

costs and fees. The judgment further prohibits Solar Bear from violating Arizona's telemarketing laws in the future.

CLU also resolved a consumer fraud lawsuit against Solid Ad Solutions, LLC and related companies ("Solid Ad.") this year. Solid Ad sold "webstores" or "webmalls" by phone to more than 4,800 consumers. Most victims were seniors and few had Internet access and expertise. No customer recouped their investment, which ranged between \$200 and \$33,400. The pre-lawsuit investigation uncovered sales records in which company employees made notes about their customers such as "Old dude – no clue," and "Has \$9k available on this card today." CLU sued the owners, managers, and top salespeople. This year, CLU obtained default judgments against individual and corporate defendants totaling \$10,574,881, which includes \$8,157,382 for consumer restitution, \$2,350,000 in civil penalties and \$67,499 in costs and attorney's fees. The judgment also bars the Defendants from telemarketing in Arizona.

### **Auto Cases - Undercover Operations, Judgment Enforcement and Safety Actions**

In 2013, the Attorney General's Office continued to conduct undercover stings to deter auto repair shops from consumer fraud. A Phoenix towing and repair shop, Sun Valley Towing, got caught. In *State of Arizona v. Sun Valley Towing, LLC*, an undercover investigation revealed that Sun Valley Towing fraudulently claimed to have replaced the fuel pump in the state's undercover vehicle, charging \$340 to the state's undercover operator. The state's expert determined that no replacement had been made. The undercover investigation as well as the numerous complaints received from consumers supported the lawsuit. CLU obtained a default judgment against the corporate Defendants for \$686,582 along with an injunction barring corporate Defendants from auto repair, towing and auto sales. CLU also entered into a consent judgment with the individual Defendants for a total of \$686,582 in civil penalties, restitution and costs and attorney's fees. The Defendants are permanently barred from the business of auto repair, towing and auto sales.

In *State of Arizona v. Bekelian, et al.*, CLU obtained a settlement to enforce the terms of a 2010 Judgment the former owner of a Phoenix motor vehicle dealership, 2020 Automotive. The original lawsuit alleged that Abraham Bekelian and others violated the Consumer Fraud Act by using deceptive advertising techniques, including refusing to sell some cars at the advertised prices and requiring consumers to purchase certain "dealer add-ons." The 2010 Judgment required Bekelian to follow an agreed-upon payment schedule, which he failed to do. The 2013 Stipulated Judgment acknowledges Defendant Bekelian's failure to make the required payments and imposes a \$250,000 penalty (less \$5,000 previously paid) for his failure to comply with the 2010 Judgment.

CLU also joined a multistate settlement against Toyota Motor Sales, USA, Inc., ("Toyota.") this year. In *State of Arizona v. Toyota Motor Corp.*, a multi-state group negotiated a \$29 million consent judgment with Toyota regarding unintended acceleration and related safety issues. The Consent judgment requires verification of safety claims, disclosure of alleged safety defects in certification and resale of used vehicles, improvements to Toyota's safety culture, and maintenance of certain safety related positions and initiatives, among other things. Toyota must also institute a consumer restitution program, which covers reimbursement to consumers who file timely complaints for reasonable out-of-pocket expenses incurred as a result of vehicles subject to the "sticky pedal," "floor mat entrapment" and "steering relay rod" National Highway Traffic Safety Administration recalls and safety campaigns. Arizona's share of the settlement amount was approximately \$698,000.

## **Pharmaceutical Matters**

The Consumer Litigation Unit continued its participation in several important multistate pharmaceutical cases this year. Among the highlights:

- *State of Arizona v. GlaxoSmithKline* ("GSK"): This case involved GSK's diabetes drug, Avandia®. For thirteen years, GSK allegedly misrepresented and hid its own studies that show Avandia® has no glycemic benefit for people with Type 2 diabetes, and that the risks of cardiac death, to which diabetics are already at risk, are high for those taking Avandia®. GSK and the states involved in this multistate investigation entered into a consent judgment. The judgment prohibits GSK from deceptively promoting its diabetes drugs, among other things. In addition, GSK paid the Attorney General's Office \$3,043,663.56 as part of the settlement. The majority of those funds will be used for the benefit of the third-party organizations and/or individuals in Arizona to implement programs to specifically address childhood obesity which can lead, later in life, to the development of Type II diabetes.
- *State of Arizona v. Janssen Pharmaceuticals, Inc* ("Janssen"): In August, 2012, CLU filed a lawsuit and consent judgment against Janssen in connection with its promotion of the drug Risperdal®, an atypical antipsychotic. For many years, Risperdal® was FDA-approved only to treat schizophrenia in adults, yet Janssen allegedly promoted Risperdal® for children and for the elderly as a way to calm agitated patients with dementia in long term care facilities. Janssen also allegedly failed to disclose Risperdal's® potential adverse side effects to physicians and withheld negative information about its drug in scientific studies. The consent judgment requires Janssen to change how it markets Risperdal®. To resolve the

matter, Janssen paid \$6,094,238. The bulk of the funds, approximately \$4,000,000, will fund research and programs to provide alternatives to the use of atypical antipsychotics for managing the effects of Alzheimer's disease and/or dementia for elderly patients in long term care facilities; for managing childhood and adolescent developmental and learning disorders, and by funding education and outreach programs directed at treatments for mental illness and/or for mental disorders. The remaining \$2,000,000 was paid to the Attorney General's Office.

## **Privacy Matters**

*State of Arizona v. Google, Inc.*: Google's "Street View" cars collected data transmitted over unprotected wireless computer networks without the knowledge or permission of the consumers whose information Google obtained, according to this multistate settlement agreement. Google's StreetView cars were equipped with antennae and open-source software that the company acknowledged collected network identification information for use in offering "location aware" or future geolocation services. The Settlement Agreement prohibits Google from collecting or storing payload data via its StreetView vehicles, except with notice and consent. The Settlement also requires Google to maintain a privacy program, including employee training, as described in the agreement, for ten years and delete or destroy, as soon as practicable, all payload data it collected through its StreetView vehicles in the United States. The Agreement also required Google to pay a total of \$7,000,000 to the states, of which Arizona received \$317,176.69.

## **General Consumer Fraud Matters**

CLU handles cases concerning a wide variety of business practices, since the Consumer Fraud Act applies to nearly every product, service and transaction impacting consumers. Here are some examples of the diverse cases handled by CLU this year:

- *State of Arizona v. Proactive Planning Solutions, LLC ("Proactive")*: Proactive was a Tempe based business providing consumers with interest rate reduction services for credit card debt. Proactive telemarketed its services nationwide through the use of "robo-calls." Consumers were guaranteed a savings of \$2,500 in interest and finance charges for their payment of \$900 or more for the service. However, customers rarely received an actual interest rate reduction or low rate credit card, but instead received a computer generated payment plan that simply demonstrated how they could save money by making higher monthly payments to their highest interest rate credit cards. Proactive has numerous successor companies that are continuing to operate under the same business model. CLU filed suit in October, 2012 against seven companies and six individuals, alleging violations of the Consumer Fraud Act and the Telephone Solicitations Act. At the

same time, the Federal Trade Commission obtained a Temporary Restraining Order, put a receiver in place and froze the companies' assets. So far, CLU has settled with four individual and corporate defendants in a Consent Judgment that bans them from telemarketing in the future. Litigation is ongoing.

- *State of Arizona v. Energy Logic, LLC ("Energy Logic")*: A Consent judgment against Energy Logic and one of its principals, Wesley Gumeringer, was negotiated in this home energy-savings case. The State conducted an undercover investigation that revealed the Defendants made unsubstantiated energy savings representations in marketing their residential "radiant barriers" that they were selling at "free lunch" presentations to primarily senior consumers.
- *State of Arizona v. Lancaster Arms, et al.*: Lancaster Arms markets and sells weapons, parts and supplies, primarily over the Internet. The Attorney General's Office obtained a consent judgment against Lancaster Arms and its owner, Chester Durda, that orders Mr. Durda to pay full restitution (\$67,000) to consumers who paid in advance for products or services that Lancaster failed to provide and, additionally, to pay \$3,000 in fees and costs.
- *State of Arizona v. Smoke Freely, Inc., et al.*: CLU filed this consumer fraud lawsuit against Smoke Freely, Inc., and its distributor in connection with Smoke Freely's marketing and distribution of electronic cigarettes. Smoke Freely advertised a "Ten Day Risk Free Trial of Prado Electronic Cigarette[s]," but allegedly charged some consumers the full price of the merchandise before the expiration of the trial period. Defendants automatically enrolled consumers in the "Refill Value Plan" and then charged consumers for additional merchandise under the plan when they deemed consumers' returns to be invalid, according to the complaint. In October, 2012, the parties settled the case in a consent judgment. The Judgment requires Smoke Freely to comply with the Consumer Fraud Act and other laws regulating electronic cigarettes, and imposes various restrictions on how the company can market "Free Trial Offers" in the future. Defendants also paid a total of \$32,100 to resolve the litigation.

### **Task Force Against Senior Abuse**

In the two years since its formation, the Task Force Against Senior Abuse ("TASA") has grown in size and scope. The TASA Advisory Group includes over 30 professionals from Adult Protective Services, Area Agencies on Aging, American Association of Retired Persons, Better Business Bureau, Department of Economic Security, Department of Health Services, state legislators and other members of the legal, medical and senior services community.

Members of the Attorney General Community Outreach Services Section continue to bring awareness to the issues affecting the elderly by offering educational opportunities to numerous senior organizations. The TASA Advisory Group partnered with the Attorney General's Office, Adult Protective Services and others to host the 2012 Annual Conference and Training of the National Adult Protective Services Association in Phoenix. Over 400 attendees from across the country, specializing in social services, adult protective services, law enforcement, victim's services and disability services participated.

The TASA Helpline received 1,173 telephone calls involving senior issues in fiscal year 2103. The Helpline continues to assist callers when feasible or direct the callers to offices/agencies that will provide appropriate help.

Arizona does not license caregivers, however, a number of agencies maintain registries which provide information relating to a caregiver's past history. In an effort to make it easier to check whether a caregiver was accused or found guilty of elder abuse, TASA's Elder Abuse Registry Consolidation committee consolidated the different resources in one location which currently is accessible through the Attorney General's website.

TASA is also exploring ways to protect seniors from unscrupulous non-medical in-home care providers, who are not licensed or regulated by any state or local agency. Last year, TASA Advisory Board Members made a presentation to a legislative subcommittee, and expects to participate in continuing discussions on the issue in the coming year.

## II. CONSUMER INFORMATION AND COMPLAINTS UNIT

The Attorney General's Consumer Information and Complaint Unit ("CIC") received 16,197 written consumer complaints and answered over 36,894 telephone calls during fiscal year 2013. Each written complaint was reviewed, most were sent to businesses for a response and many were referred to other agencies for handling. All told, CIC recovered \$1,155,055 for consumers last year. The major trends of consumer complaints last year are as follows:

### Consumer Complaints

Mortgage Companies/ Loan Modification	1120
Business Opportunities	1050
Telemarketing Fraud	732
Collection Services	661
Services (General)	631
Motor Vehicle (Used Vehicle Sales)	584
Motor Vehicle (Repairs)	330
Pay Television (Satellite/Cable)	305
Phone Service (Cellular)	262
On-line and Mail Order Products	258

## III. AGENCY UNIT

The Agency Unit provides legal advice and representation to the Arizona Departments of Financial Institutions, Real Estate, Insurance, Agriculture and Game & Fish. Because of the diversity of the client agencies represented, the Agency Unit's attorneys address a broad range of legal issues at the Office of Administrative Hearings as well as in State and Federal court.

### Department of Financial Institutions

The Agency Unit represents the Department in cases against various types of financial institutions regulated by the Department including state-chartered banks, mortgage brokers, mortgage bankers, collection agencies, debt management companies, and automobile sales finance companies. In a case against Midland Financial Management, the Department issued a cease and desist order against a collection agency, for numerous violations of the Department's statutes and rules. The company ultimately agreed to sign the Department's proposed consent order, and paid a \$750,000 penalty to settle the action. Although the company denied liability, they consented to immediately stop the violations alleged by the Department.



In another action against an Arizona-based debt settlement company doing business nationwide, JHass Group L.L.C. d/b/a J. Hass Group, LLC ("J. Haas"), the company claimed it did not need a license for its debt settlement practices. Following a five day hearing, the Administrative Law Judge issued an order agreeing with the Department's position and finding that J. Haas engaged in unlicensed activity as a debt management company. The Administrative Law Judge recommended a \$150,000 civil monetary penalty. J. Haas appealed the Superintendent's Final Decision, but the Maricopa County Superior Court affirmed. The company then appealed to the Arizona Court of Appeals. The case is still pending.

### **Department of Real Estate**

As in previous years, licensed realtors continue to operate as property managers and the Department has seen an increase in enforcement actions. In one case, the Department summarily suspended the real estate broker's license for the designated broker for PRM, a property management company. After an audit the Department determined that PRM's trust accounts were short approximately \$800,000 and that the designated broker had misrepresented the status of these accounts during an electronic broker's audit. An Administrative Law Judge upheld the summary suspension for the designated broker and assessed a civil penalty.

The Department initiated another administrative action against two real estate brokers and a property management company for property management violations, specifically trust account deficiencies. The Department issued a Cease and Desist Order against Rathbun Realty based on allegations that the trust account was deficient by approximately \$1.8 million and the company's failure to cooperate with the Department's efforts to conduct an audit. After the administrative hearing, at which the Department was represented by the Agency Unit, the Real Estate Commissioner revoked the licenses for the two brokers and the company.

### **Department of Insurance**

The Agency Unit successfully defended the Department of Insurance in a special action lawsuit filed by Plaintiffs, who are supported by the Arizona Chiropractic Society. Plaintiffs sought issuance of a writ of mandamus to order the Director to enforce the terms of the Unfair Claim-Settlement Practices Act, in A.R.S. § 20-461, against Blue Cross Blue Shield of Arizona. The trial court found in favor of the Department and the Court of Appeals determined that the Director has discretion in the enforcement of A.R.S. § 20-461(B) and, therefore, mandamus relief was not available. The case is now on appeal to the Arizona Supreme Court.

### **Department of Agriculture**

The Agency Unit represents the Arizona Department of Agriculture as well as one committee, six councils and one board that are connected to the Department.

The Agency Unit work includes advice on open meeting law, rulemaking (including performing the rulemaking), interpretation of their governing statutes, policies, grants, and contracts. In addition, for the Department and Office of Pest Management, the Agency Unit reviews enforcement actions related to pesticides, handling administrative hearings, managing litigation, and advising on public records law, among other legal activities.

The Agency Unit is currently representing the Department of Agriculture in *State of Arizona, ex rel., Donald Butler v. Lockett Ranches Inc.*, a lawsuit against an Arizona ranch for their failure to properly account for grant money it received to complete certain projects related to livestock. In another case, *Stambaugh v. Butler*, the Department has been sued regarding the interpretation of a statute concerning cattle brand approvals. The Plaintiff is seeking a declaration and injunctive relief compelling the Department to rescind the brand of the other person. Litigation is ongoing.

### **Game and Fish Commission & Department of Game and Fish**

Agency Unit attorneys are also responsible for providing legal advice to the Game and Fish Department and the five-member, Governor appointed Game and Fish Commission. The attorneys provide advice on a broad variety of areas including general civil matters, litigation in State and Federal court, water rights, real property acquisitions, the Endangered Species Act, contracts, procurement open meeting law and rulemaking.

In *Center for Biological Diversity v. United States Forest Service*, the Agency Unit attorneys represented the Game and Fish Department in a federal case in which Plaintiff's alleged that the U.S. Forest Service violated the Resource Conservation Recovery Act by allowing the disposal of lead ammunition on the Kaibab National Forest, and argued that the disposal results in significant harm to the California condors and other avian wildlife. Plaintiffs are seeking declaratory and injunctive relief requiring the Forest Service to abate the harm. The Arizona Game and Fish Commission filed a limited Motion to Intervene for the sole purpose of filing a Motion to Dismiss.

## **IV. TOBACCO ENFORCEMENT UNIT**

### **Successfully Protecting Arizona's Share of Payments Received Pursuant to the Tobacco Master Settlement Agreement**

In settlement of litigation initiated by the State of Arizona 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 each tobacco manufacturer that joins the agreement ("participating manufacturers" or "PM"), to make significant annual payments to the settling states in perpetuity.

In 2013, Arizona received approximately \$150 million in total MSA payments. Since 1998, Arizona has received more than \$1.25 billion in settlement payments.

Under state law, all monies received by the state from the MSA are dedicated entirely to the Arizona Health Care Cost Containment System (“AHCCCS”). The Tobacco Enforcement Unit (“TEU”) protects Arizona’s MSA payments by diligently enforcing Arizona’s qualifying statute (“Escrow Statute”). The Tobacco Enforcement Unit employed a multi-prong approach to enforce Arizona tobacco laws during 2013.

### **Multi-year Settlement of MSA Payment Disputes**

The TEU continues to work to protect the State's MSA payments due approximately April 15th of each year. The PMs previously sought to apply a reduction to their annual payment for 2003 stemming from a dispute whether the individual states each “diligently” enforced their tobacco statutes during 2003. The PMs asserted that they were entitled to the 2003 NPM Adjustment that would reduce their corresponding MSA payment. Also, due to the existence of the reallocation provision, if Arizona lost this dispute, it could theoretically lose its entire 2003 MSA payment. Arizona was ordered to arbitrate this dispute per the arbitration clause under the MSA.

In 2013, Arizona and 21 other states entered into an agreement with the PMs to resolve the NPM Adjustment disputes for 2003-2014. The Arizona-led settlement resulted in an increase of approximately \$50 million to the State's total MSA monies for 2013 as well as the waiver of the NPM Adjustment applicable to the April 2014 and 2015 payments and an agreement from the PMs to not withhold the NPM Adjustment monies beginning in calendar year 2016. Some states are challenging the settlement, and litigation is expected in the coming year. Nonetheless, Arizona continues to lead the efforts to oppose these disputes and spend considerable time and resources fighting to ensure the continued validity of this settlement.

### **Enforcement of the Escrow and Directory Statutes**

- The TEU enforces laws applying to tobacco companies that elect not to participate in the MSA. Those nonparticipating manufacturers (“NPMs”) must place certain amounts of money into a qualified escrow fund for the benefit of Arizona based on the number of sales made in the state. Among other things, the TEU (i) determines the identity of those NPMs, which had sales in Arizona during a given year; (ii) calculates the total volume of sales for each NPM; (iii) determines the escrow liability based on a set statutory rate; and (iv) demands the requisite funds be timely deposited into a “qualifying escrow fund”. If a NPM refuses to comply with the Escrow Statute, the TEU initiates litigation to obtain compliance. The TEU has again worked diligently to receive total compliance with the Escrow Statute.
- The TEU also enforces the Directory Statute, pursuant to which the Attorney General’s Office publishes on its website a list of the PMs and NPMs allowed to sell cigarettes in Arizona as well as the accompanying permitted brands. If a brand is not listed, it cannot be sold in Arizona. The TEU reviews initial and annual certifications submitted by tobacco companies requesting to be listed in

the Directory, and takes appropriate enforcement action against companies who fail to comply with the law.

### **Investigation of Unlawful Internet Sales of Tobacco Products**

Last year, the Attorney General's Office drafted and successfully advocated for the passage of SB1280, which prohibits the sale in Arizona of tobacco products (except pipe tobacco and cigars) over the internet and through other non-face-to-face methods of sale, referred to as "delivery sales". The TEU has spent considerable time providing notice to those affected by this law. Also, the TEU has been attempting to work with credit card companies and delivery services to prevent such sales from being completed as well as investigating the continued sale of cigarettes directly to consumers by online retailers.

### **New Law Regulating RYO Machines and Enhancing Tobacco Laws**

In 2013, the Attorney General's Office drafted and successfully advocated for the passage of SB1312, which limits the use of roll your own (RYO) Machines (high speed rolling machines used in smoke shops to roll a carton of cigarettes in a few minutes in an effort to circumvent tax and public health laws.) The unlawful use of these machines could have a negative impact on the State's continued receipt of its full share of the MSA payments. SB1312 allows the continued commercial use of such machines only if all manufacturing and distribution laws are complied with. The TEU has spent considerable time implementing this new law and coordinating notice and enforcement activities with the Arizona Department of Revenue.

SB1312 also closes a major loophole in the Escrow Statute concerning NPM cigarettes sold on tribal lands where the vast majority of NPM cigarettes are being sold. The new law makes clear that those cigarettes are subject to the Escrow Statute. SB1312 also includes a number of provisions that are expected to enhance the effectiveness of the Directory Statute. Finally, SB1312 includes a provision that allows NPMs to assign their rights to escrow funds to AGO in the event they do not wish to pay to maintain the account for 25 years. The TEU is working to implement this new law as well.

### **New Law Prohibiting the Sale of E-Cigarettes to Minors**

Another victory on the legislative front was the passage of SB1209, which adds e-cigarettes to the list of products that cannot be sold to minors (the other prohibited items are tobacco products or related paraphernalia, but e-cigarettes are separately defined). The TEU took steps to provide notice to those affected by this law, and added this information to the letters the TEU sends to retailers after a youth undercover visit. In the coming year, the TEU plans to add this product to the list of items that the undercover youths attempt to purchase.

## **Enforcing the Public Health Provisions of the MSA through the Youth Tobacco Program**

The TEU 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 PM's marketing practices in an effort to protect public health.

### **Youth Tobacco Program**

In the past year, the TEU has overseen over 2,000 undercover inspections of tobacco retailers, including multiple inspections in each county of the state. With the assistance of local law enforcement agencies, 477 citations were issued to clerks and businesses found to be in violation of Arizona's youth tobacco law, over twice the number of citations compared to last year. The TEU continued its efforts to encourage participation in all jurisdictions in order to increase enforcement efforts of Arizona's youth access law statewide, including by working with the FDA and local law enforcement. The TEU worked to create a statewide diversion program to be used by the courts to educate those cited for violating the youth tobacco law. Given that any retailer in Arizona can sell tobacco products, TEU is constantly looking for types of stores that it did not previously know were selling tobacco products such as 99 cent stores. The TEU continues its recruitment efforts to maintain a steady pool of active youth volunteers.

## **V. ANTITRUST UNIT**

### **E-Books Litigation**

In 2012, the Antitrust Unit, as part of a multistate enforcement effort, sued Apple and five of the nation's largest publishers -- Penguin, Simon & Schuster, Macmillan, HarperCollins and Hachette -- for conspiring to fix and raise the prices of electronic books ("e-books"). E-books are electronic versions of books that can be read on computers, cell phones and other electronic devices. The states reached settlement agreements with all of the publishers which, upon final court approval, will return approximately \$166 million to consumers nationwide and reimburse the states more than \$17.6 million for investigative, litigation and other related costs. Arizona consumers will recover an estimated \$3.5 million from these settlements.

The states tried their case against Apple in June 2013. On July 10, 2013, the court ruled in the states' favor, finding that Apple violated State and Federal antitrust laws by conspiring with the publisher Defendants to raise e-book prices. A separate trial will be held to determine the amount of consumer damages and civil penalties Apple must pay for its part in the price fixing conspiracy.

## **Ensuring Schools Comply with Public Finance Laws**

The Antitrust Unit filed suit against the Red Mesa Unified School District and accounting firms Heinfeld, Meech & Co. and Joseph Eve for violating Arizona's school procurement code by permitting Defendant Eve to work on the District's 2009 and 2010 audits prior to the conclusion of the procurement process and approval of the audit contracts. Settlements were reached with all of the Defendants. The settlements required Defendant Eve to disgorge \$21,875 in illegally obtained fees, the District to repay the Arizona Department of Education \$19,000 for audit expenses associated with the illegally contracted audit and all three Defendants to pay the Attorney General's Office \$60,000 as reimbursement of attorneys' fees and investigative, litigation and other associated costs. Additionally, each of the Defendants was required to obtain additional procurement training.

## **VI. MONIES RECOVERED FOR THE STATE AND CITIZENS OF ARIZONA**

In fiscal year 2013, the Consumer Protection and Advocacy Section recovered a total of more than **\$312 million**, including:

Diligent Enforcement of Tobacco MSA - **\$150 million**

Judgments obtained for the State in consumer and antitrust cases – **\$ 25,295,823.75**

Payments to consumers from the national mortgage settlement – **\$ 96.5 million**

Recovery for Consumers in response to complaints – **\$ 1,155,054.75**

Judgments obtained for Consumers in consumer and antitrust cases – **\$ 39,643,112.96**



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PUBLIC ADVOCACY AND CIVIL RIGHTS DIVISION

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## FY2013 ANNUAL REPORT

### APPENDIX 2 OF APPENDIX C

## CIVIL RIGHTS COMPLIANCE AND CIVIL RIGHTS LITIGATION SECTIONS

### OVERVIEW

The Arizona Civil Rights Division (“ACRD”), a component of the Public Advocacy and Civil Rights Division, enforces the Arizona Civil Rights Act (“ACRA”), which prohibits discrimination in employment, housing, public accommodations and voting by investigating, mediating and litigating civil rights complaints statewide. ACRD also provides conflict resolution services and mediation training programs throughout the state. It not only responds to complaints, but seeks to reduce discriminatory conduct through education and outreach in the community. ACRD is comprised of the Compliance Section, which screens and investigates complaints, and the Litigation Section, which litigates civil rights violations and provides legal advice and support to the Compliance Section.

The **Civil Rights Compliance Section (CRC)** investigated 1,267 discrimination charges and resolved 827 cases in FY 2013, including 163 housing charges, 552 employment charges and 112 public accommodations charges. The CRC also issued 17 determinations in cases where the ACRD found reasonable cause to believe that unlawful discrimination had occurred. Eight of these cases were successfully conciliated before litigation became necessary.

The **Civil Rights Litigation Section (CRL)** resolved 94 charges of discrimination either through mediation, conciliation or litigation and performed work on hundreds of other charges filed with the ACRD. As a result of these efforts, the Litigation Section obtained a total of \$1,069,624.44 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.

## **ACCOMPLISHMENTS**

The **Civil Rights Conflict Resolution Program** mediated 113 civil rights matters and facilitated 62 agreements, which is a 55% settlement rate. As a result of the Conflict Resolution Program's efforts, charging parties received a total of \$431,038.44 in monetary relief and also obtained significant injunctive relief to assist the parties in finding common ground to resolve charges of discrimination filed with the ACRD.

- In an employment matter alleging sex and national origin discrimination, the employer agreed to pay the charging party \$50,000.
- Mediation resolved three separate but related age-based employment discrimination charges against a Maricopa County agency. Over several mediation sessions, the County agreed to pay each charging party \$4,200 and to remove any negative write-ups from their personnel files. Additionally, one charging party received a new annual evaluation, which resulted in her receiving a \$200 bonus, and was allowed to move to a different division within the agency. The County also agreed to evaluate the other two charging parties for eligibility for extended FMLA leave.
- As a result of mediation, a non-profit corporation that provides crisis intervention services has agreed to purchase Video Remote Interpreting ("VRI") equipment for each of its 29 crisis centers in Arizona. VRI technology is a means of providing American Sign Language interpretation in situations where it is not practicable to have a live interpreter physically present. The respondent also agreed to provide training to all of its employees on the use of the VRI equipment, as well as on other commonly required accommodations for deaf and hard-of-hearing clients.
- Following mediation of a national origin-based housing discrimination complaint, the respondent landlord agreed to accept less than the amount awarded to satisfy the eviction judgment, allow the complainant to pay off the reduced judgment balance over time, and to request that the judgment be vacated when the complainant had paid off the reduced balance.

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

The **Civil Rights Litigation Section** also helped parties resolve 19 charges through conciliation agreements achieved prior to the conclusion of the ACRD's administrative investigation or after a reasonable cause determination was issued but before a lawsuit



was filed. Through these conciliation efforts, the ACRD obtained a total of \$212,680 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, such as providing for accessible parking spaces and reasonable accommodations to community rules, policies or practices, to afford these persons equal opportunity to use and enjoy their homes or to access the goods and services of public accommodations, and requiring policy revisions and training to prevent future civil rights violations in housing and employment.

For example, the CRL successfully resolved eight cause findings on behalf of eight charging parties who alleged management of a Casa Grande nursing home first subjected them to unequal working conditions and then fired them because of their race, color and/or national origin. Six of the eight charging parties were of Kenyan national origin; one was an African-American and one was an American of Indian national origin. In several cases, the employer alleged that it had terminated the charging parties' employment because of patient abuse. Upon investigation, however, the CRC concluded these allegations were pretext for discrimination. As part of the conciliation, the respondent provided the concerned charging parties letters acknowledging that its allegations of patient abuse were unsubstantiated. Respondent also agreed to pay the charging parties a total of \$111,500, to implement equal employment opportunity policies and to provide training to all managers and supervisors on State and Federal laws prohibiting employment discrimination based on race, color, national origin and other protected classifications.

In seeking to enforce housing, employment and public accommodations discrimination laws throughout Arizona, the CRL pursued 21 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. Through these litigation efforts, the ACRD obtained a total of \$425,906 in monetary relief for the Charging Parties and for future monitoring and enforcement activities. Among the highlights of the cases litigated by the CRL this past year:

- *State v. Amorita Holdings, LLC*: This case alleges that Defendant, which operates the Scottsdale Belle Rive apartment complex, discriminated against a mother and her adult daughter because of the daughter's disability (bi-polar disorder) by immediately terminating the women's lease after the daughter called a behavioral health crisis line when she experienced thoughts of suicide while her mother was at work. According to standard practices, the crisis line called the Scottsdale Police Department ("SPD") for assistance. The SPD responded to the apartment complex, secured the daughter without incident, and then transported her to a behavioral health hospital where she was hospitalized under a psychiatrist's care for eight days. During that time, her mother was required to relocate from the Scottsdale Belle Rive. Defendant alleges that by indirectly summoning the SPD, the daughter violated the women's lease and the Arizona Landlord-Tenant Act ("ALTA"), which allows landlords to immediately terminate a tenancy when the landlord believes that the tenant poses a threat to the health, safety or property of the landlord or other tenants. The ALTA, however, prohibits

a landlord from interfering with a tenant's right to summon a peace officer or emergency assistance in response to an emergency. An Arizona public health statute also prohibits terminating a tenant's lease because she sought or obtained treatment for a mental illness. More, the record shows that Defendant did not immediately terminate the leases of non-disabled tenants who either sought emergency assistance after they had attempted suicide or whose suspected criminal activities prompted a call for service to the SPD from another tenant. Discovery closes on August 23, 2013. The matter is set for a six-day trial in Maricopa County Superior Court beginning July 14, 2013.

- *State v. Arizona Cardinals & Arizona Sports and Tourism Authority ("ASTA")*: This case under the AzDA alleged that the Cardinals and ASTA discriminated against deaf and hard of hearing fans by failing to provide effective captioning of the aural information broadcast on the University of Phoenix Stadium's ("Stadium") public address system during Cardinals games and other large sporting events. At different times before the settlement was reached, the Cardinals provided closed captioning on either hand-held devices, which prevented the user from signing, clapping, cheering or enjoying refreshments while reading the captions, or else at seat-based monitors, which relegated deaf and hard of hearing fans to only one area of the Stadium. As a result of the CRL's conciliation, the Cardinals and ASTA are now providing open captioning, displayed on ribbon boards directly below the large video displays in both end zones, at all Cardinals home games and other major sporting events held at the Stadium. Open captioning allows fans to watch and "hear" the game, while keeping their hands free, from most seats in the Stadium. As part of the settlement, the Cardinals invited deaf and hard of hearing fans and advocacy groups to attend the "Red-White Scrimmage" held on August 3, 2013, for a free demonstration of the new technology, and donated \$5,000 and 20 tickets to four schools and one non-profit that serve deaf and hard of hearing children.
- *State v. ASARCO, LLC*: This employment discrimination case involved 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 at ASARCO's Mission Mine in Sahuarita, Arizona. After an eight-day trial in April 2011, the jury returned a verdict against ASARCO on the State's and the charging party's sexual harassment claims and awarded the charging party \$1 in nominal damages and \$868,750 in punitive damages. This award exceeded the applicable compensatory damages cap under Title VII of the federal Civil Rights Act by hundreds of thousands of dollars. After post-trial briefing, the district court reduced the punitive damages award to the statutory cap of \$300,000, ordered injunctive relief in the form of policy changes and training in State and Federal employment discrimination law for ASARCO Mission Mine employees, and awarded the charging party all of her requested attorneys' fees. The Ninth Circuit heard oral argument on ASARCO's appeal of the verdict and damages and attorneys' fees awards on June 12, 2013.

- State v. City of Cottonwood & Cottonwood Police Department*: This employment discrimination case involved allegations that the Cottonwood Police Department (“CPD”) 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 to promote from attaining that position. In addition to disparate impact, the CRL’s case included claims for disparate treatment discrimination and retaliation relating to Defendants’ implementation of the physical fitness test. In December 2011, the CRL moved for partial summary judgment on the disparate impact claim, and Cottonwood moved for summary judgment on all claims. On July 20, 2012, the U.S. District Court in Phoenix denied Cottonwood’s motion, granted the CRL’s motion, and enjoined Cottonwood from requiring CPD officers to pass a physical fitness exam as a prerequisite for promotion unless the exam in question has been validated as job-related specifically to the job for which the applicant is applying. Cottonwood filed a notice of appeal to the Ninth Circuit, and the parties agreed to mediation through the Ninth Circuit Mediation Program. Through a three-year consent decree entered on February 13, 2013, Cottonwood agreed to promote the charging party to sergeant with seniority retroactive to February 2007; to increase her base pay by \$5,849; to pay her \$19,400 in compensatory damages and six years of lost wages in the amount of \$12,667, and make an employer’s contribution on the latter sum to her pension in the amount of \$3040; and to pay the State \$12,600. Cottonwood also agreed to abide by the Court’s injunction and for a period of five years, not make passing a physical fitness test a requirement for retaining employment with the CPD, to implement a General Order setting out the CPD’s equal employment opportunity policy, and to provide training to all officers on State and Federal laws prohibiting employment discrimination.
- State v. The Geo Group, Inc.*: In this employment discrimination case litigated jointly with lawyers from the EEOC, plaintiffs alleged that male managers sexually harassed numerous women employees, including primarily correctional officers, and fostered an atmosphere of sexual intimidation and harassment at Florence West, a prison facility Geo operates in Pinal County. After nearly three years of litigation, the case settled on the first day of trial for \$140,000 for two harassment victims who remained in the case. The original charging party settled privately several weeks earlier. Under the three-year consent decree, which was entered on April 26, 2013, Geo committed to extensive policy changes and training, including requiring that all internal complaints of sexual harassment and/or retaliation at Florence West be investigated by GEO’s Office of Professional Responsibility from its headquarters in Boca Raton or its regional designee and implementing a management evaluation system at Florence West that includes EEO compliance, compliance with anti-retaliation policies and laws and compliance with the consent decree.
- In March 2103, the CRL initiated litigation on behalf of a group of women employees at Geo’s Central Arizona Correctional Facility (“CACF”), a facility housing sex offenders that Geo also operates in Pinal County (“Geo II”). Geo II

alleges that Geo tolerates a sexually hostile environment at CACF and further alleges that it retaliated against two charging parties because they had attempted to participate in the first Geo lawsuit (“Geo I”). The claims of these two women, among a number of others, were dismissed on procedural rulings that the CRL and the EEOC are appealing to the Ninth Circuit. Geo II, which is pending in Maricopa County Superior Court, after being remanded from U.S. District Court in Phoenix, is stayed through August 26, 2013, to allow the parties to pursue conciliation.

- *State v. Natural Health Care Alternatives*: In this employment discrimination case, the State alleged that Defendant’s owner, a chiropractor, subjected an 18-year-old office worker, who was training to become a chiropractic assistant, to sexual harassment so severe it resulted in constructive discharge. The CRL litigated this case with the charging party’s attorney, who did not assert an employment discrimination claim but instead asserted common law torts, including intentional infliction of emotional distress. The charging party’s attorney argued that his client was entitled to substantial compensation for emotional distress and punitive damages because, as a priest in his client’s church ward, the chiropractor stood in a position of trust with the young woman, and his harassment was an egregious violation of that trust. On the eve of trial, the CRL settled State’s claims for \$37,500 in back pay for the Charging Party, \$2250 in costs to the State and substantial injunctive-style relief, including the chiropractor’s agreement to obtain counseling. The Charging Party proceeded to trial, and the Maricopa County jury awarded her \$100,000 in compensatory damages and \$50,000 in punitive damages.
- *Cooke (State) v. Town of Colorado City, et al.*: In this case of housing discrimination pending in U.S. District Court in Phoenix, plaintiffs allege that the Defendants, Colorado City, Arizona, Hildale, Utah, and several related utility entities, discriminated against a Colorado City resident and his family by not providing them with water and other utility services; by intimidating, threatening and interfering with the family’s right to enjoy their home because of the Complainant’s religion; and by not accommodating the Complainant’s disability. The CRL also alleges that the Defendants engaged in a pattern or practice of housing discrimination based on religion. Plaintiffs allege that Defendants are controlled by the Fundamentalist Church of Jesus Christ of Latter Day Saints (“FLDS”) and its president and prophet, Warren Jeffs, who is serving a life sentence plus 20 years in Texas for the aggravated sexual assault of a 12-year-old girl and a 15-year-old girl. The Complainant is a former member of the FLDS. His family has been hauling water to their home for five years due to the Defendants’ refusal to provide municipal water service. In February 2013, the Court granted Defendants’ motion for summary judgment on Plaintiffs’ disability discrimination claim but denied their motion on the religion-based denial of services, interference and pattern and practice claims. The Court has approved the final pretrial order and set the case for jury selection in Prescott on January 28, 2014, and for trial in Phoenix beginning February 4, 2014. The Court has yet to determine the length of the trial.

**Civil Rights Outreach Activities:** In addition to its investigation and enforcement activities, the ACRD participates in and sponsors numerous education and outreach events to inform the community about civil rights laws and the ACRD's complaint and resolution process. ACRD staff participated in over 43 of these events throughout the state during the past year.



TOM HORNE  
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL  
PUBLIC ADVOCACY AND CIVIL RIGHTS DIVISION

THOMAS K. CHENAL  
CHIEF COUNSEL

## FY2013 ANNUAL REPORT

### APPENDIX 3 OF APPENDIX C

### ENVIRONMENTAL ENFORCEMENT SECTION

#### MISSION

To provide the highest quality legal advice and representation to client agencies in order to promote the fair enforcement of all civil environmental and natural resources laws.

#### OVERVIEW

The Environmental Enforcement Section ("EES") provides advice, enforcement and representation activities related to State and Federal environmental and natural resources law. The Section advises, represents and litigates on behalf of the Arizona Department of Environmental Quality ("ADEQ") in State and Federal environmental matters and enforces the environmental statutes.

#### ACCOMPLISHMENTS

- ***Western States Petroleum v. ADEQ***: Western States Petroleum ("WSP") appealed the determination that WSP was ineligible for an additional \$500,000 from the State Assurance Fund ("SAF") because WSP failed to utilize to the maximum extent possible insurance coverage, pursuant to A.R.S. §§ 49-1054(A) and 1052(F)(5). EES successfully briefed and argued in the Arizona Court of Appeals the decision by ADEQ to deny Appellant's claim for additional coverage of up to one million dollars from the SAF, which provides reimbursement of funds to owners and operators for investigation and remediation costs incurred in connection with a leaking underground storage tank.

- ***Butler v. Brewer:*** This is a case brought on behalf of a child Plaintiff seeking to establish that the atmosphere is a public trust, with unknown but substantial consequences for the State. EES won its motion to dismiss in the lower court, which was appealed to the Arizona Court of Appeals. EES successfully briefed the matter and the Court of Appeals upheld the dismissal of the Superior Court claim.
- ***Arizona Department of Environmental Quality v. Chevron Inc.:*** EES, with the assistance of outside counsel, negotiated a settlement of \$14 million for the improper receipt of monies from a state fund to clean up underground storage tank contamination. In the early 1990s, the State established the fund for cleanup at sites because several owners/ operators were unable to meet the requirement to obtain insurance. Chevron had insurance and in some instances obtained proceeds from both the state fund and the insurance companies for the same contamination. In other instances, Chevron failed to pursue its own insurance claims and improperly relied solely on the state fund. Chevron admitted no liability but agreed to reimburse the State for a majority of the monies they received from the state fund.
- **The Regional Haze Litigation:** A citizens' suit was filed by a number of environmental organizations [*Nat'l Parks Conservation Ass'n v. EPA*, No. 1:11-cv-0158 (D.D.C.)] purportedly seeking to compel EPA to propose and finalize action regarding regional haze issues under the Clean Air Act pertaining to several states, including Arizona. EES intervened in the suit on behalf of the ADEQ, in the District Court in Washington, D.C., and attempted to engage the EPA and the environmental Plaintiffs in discussions which would allow Arizona more time to develop its plan. However, a final Consent Decree was entered over the State's objection in June, 2012. Arizona appealed the entry of the Consent Decree to the D.C. Circuit, and the appeal is ongoing. Following the entry of the Consent Decree, EPA issued a Federal Implementation Plan for Arizona, which EES appealed to the 9<sup>th</sup> Circuit Court of Appeals on behalf of ADEQ. Both matters are in litigation.

### **EES IMPACT INFORMATION FOR FY13**

- EES collected \$244,500 in penalties for the State.
- EES collected approximately \$10,000,000 in reimbursement to the State.
- EES saved the State Assurance Fund approximately \$644,900.



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ATTORNEY GENERAL

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**THOMAS K. CHENAL**  
CHIEF COUNSEL

## **FY2013 ANNUAL REPORT**

APPENDIX 4 OF **APPENDIX C**

### **AGENCY COUNSEL SECTION**

#### **OVERVIEW**

The Agency Counsel Section (“ACS”) represents more state agencies, boards, commissions, elected officials and judicial officers on more legal issues than any other section of the Office of the Attorney General. ACS lawyers are the State’s and state agencies’ experts in several areas, including public monies, procurement, contracting and financial issues, probation, and inmate parole. ACS’ 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. ACS’ successes are measured in its partnerships with the client agencies and the assistance it provides to them in performing their statutory missions in a creative and cost-effective manner, and its ability to effectively handle litigation matters when they arise. However, unlike many other sections of our Office, some of ACS’s greatest successes are invisible, such as the lawsuit that was never filed due to high quality legal advice provided by ACS, or the major contract dispute that never happened, due to the quality of the written agreement drafted by ACS.

#### **ACCOMPLISHMENTS**

ACS lawyers conducted a large number of administrative and judicial proceedings on behalf of client agencies during FY 2013. This included matters at every administrative and judicial level, from notary revocation hearings at the Arizona Office of Administrative Hearings and garnishment proceedings in justice courts to proceedings before the



Arizona Supreme Court and the U.S. Supreme Court. Here are a few of the major accomplishments:

ACS lawyers during FY 2012 provided training to public procurement officers on the topic of compliance with the conflict of interest laws pertaining to purchasing and procurement, training on the topic of conflict of interest and evidentiary issues for hearing officers and members of the State Board of Equalization, and training regarding duties, responsibilities and procedures for new board members on the Board of Executive Clemency. ACS also provided training in the fundamentals of testifying in judicial and administrative proceedings for the Superior Court of Arizona in Maricopa County and for the Arizona Department of Real Estate.

ACS also assisted its clients in transactional work. For example, ACS represented the Arizona Department of Corrections (“ADC”) when a dispute arose between ADC and its contracted supplier of inmate healthcare. ACS assisted ADC in negotiating a mutually-agreeable termination of that contract (including a release of claims) and in expediting a process to award a new contract to a substitute supplier. One of the more colorful ACS clients is the Arizona Exposition and State Fair Board. One ACS attorney annually negotiates and documents the myriad contracts needed for the Fair, including facility leases and other agreements for the Coliseum’s various special events throughout the year. This work included representing management in connection with the, renegotiation of the net seven million dollar carnival lease.

ACS also assists the Arizona Department of Administration and other agencies in procurement work. For example, during FY 2012, ACS supported the State Procurement Office in a major procurement for a new financial accounting and control software system. As a result, this major procurement went smoothly and without protest or other challenge.

ACS presented at the Arizona Statewide Disaster Relief Recovery Exercise regarding the potential legal pitfalls that may arise when government agencies respond to a disaster. The 2012 Exercise entailed a simulated dirty bomb explosion in central Phoenix and drew representatives from government entities statewide.

ACS helped successfully transition an entire new Board of Executive Clemency and a new executive director/chairman. ACS provided immediate and thorough legal training to the Board after a legal challenge was filed in a death penalty case concerning the composition of the Board and their background and training.

Litigation matters included:

- *White Mountain Health Center, Inc. v. Maricopa County et al:* ACS lawyers moved to intervene in this lawsuit on behalf of the State of Arizona ex rel.

Thomas C. Horne in his official capacity as the Attorney General, for the purpose of seeking a ruling on the constitutionality of the Arizona Medical Marijuana Act. The case is now fully briefed before the Arizona Court of Appeals.

- *Wolfson v. Concannon*: ACS defended the constitutionality of portions of the Arizona Code of Judicial Conduct that restrict the political activities of judges and judicial candidates. After prevailing in the federal district court, ACS defended the appeal at the U.S. Court of Appeals for the Ninth Circuit. The case has been fully briefed and argued.
- In its role as counsel to the State's pension systems, ACS has defended the constitutionality of important 2011 legislative changes to those systems. Most recently, in *Fields v. EORP* ACS lawyers defended changes to the future-benefit increase mechanism of the Elected Officials Retirement Plan, by briefing and arguing the first of these cases to reach the Arizona Supreme Court. *In re Scannell*: ACS represents the Clerk of the Superior Court in a Chapter 11 bankruptcy, where the Clerk holds a \$2 million criminal restitution lien against the debtor, and a lender holds a \$1 million purchase money mortgage lien on a piece of property owned by the debtor. A dispute has arisen regarding priority of the liens that involve two competing statutes – A.R.S. 13-806(F) and A.R.S. 33-705. The matter has been briefed and argued to the Bankruptcy Court.
- *In re Eurofresh*: ACS attorneys represented the Department of Corrections and its Arizona Correctional Industries ("ACI") as creditors in a Chapter 11 bankruptcy case, where ACI had provided contract inmate labor for greenhouse operations. ACS represented ADC in hearings concerning the sale of Eurofresh assets, and was involved in the initial contact with the new buyer, who agreed to retain ACI as its source for labor in the future, which is critical to on-going ACI work programs.
- *Rollins v State*: ACS attorneys successfully defended a declaratory judgment action filed in state Superior Court challenging the constitutionality of legislative amendments to state statutes pertaining to the regulation of for sale and open house signs by homeowner associations.
- *Sodaro v. Chief Justice Rebecca Berch, et al.*: ACS successfully defended Plaintiff's constitutional federal court challenge to a portion of Arizona's attorney admission criteria requiring applicants for admission on motion to be primarily engaged in the active practice of law in the home state where the attorney is licensed and not by telecommuting from another jurisdiction.
- *Intresys Protest*: ACS assisted the Administrative Office of the Courts with a favorable resolution of a procurement protest filed by an incumbent vendor

challenging the award to another vendor for the state court e-filing contract and thereby avoiding extensive litigation.

- *City of Scottsdale v. ASRS*: ACS represented the Arizona State Retirement System (“ASRS”) and obtained a favorable settlement involving a termination incentive program. In a related matter, ACS obtained a favorable Office of Administrative Hearings recommended decision that ASU owed ASRS \$1.2 million. ASU has appealed the decision to the Superior Court.
- *Hamm v. Ryan*: ACS successfully defended constitutional challenges through the Court of Appeals to A.R.S. § 41-797 requiring prison visitors to pay a background check fee when the monies collected are used for ADC building renewal.
- *BlackBox v. Arizona Department of Administration*: ACS successfully defended Black Box’s protest of the award to Centurylink of the over \$100 million dollar statewide voice and network contract. BlackBox unsuccessfully attempted to usurp the procurement code’s exclusive remedy by an ancillary action filed in Superior Court. ACS prevailed by persuading the judge that the action was improper and that any challenge involving the procurement of state services must be conducted in the administrative arena.
- *Ramon Davila, Jr. vs. Arizona Radiation Regulatory Agency*: ACS protected the citizens of Arizona when Ramon Davilla, Jr., a health physicist, challenged a Notice of Violation issued to him. ACS successfully defended the Arizona Radiation Regulatory Agency’s decision to levy a civil penalty for falsification of laboratory records and for failure to properly monitor a physician’s exposure to radiation.
- *United States v. McCluskey*: The Department of Corrections was served with a Subpoena Duces Tecum for the production of thousands of pages of documents over a five year period of time concerning the operation of the Kingman prison facility. The subpoena was issued on behalf of McCluskey who escaped from the Kingman prison complex and went on a crime spree killing two individuals. ACS, representing ADC, significantly limited the scope of the subpoena resulting in minimal document production and man-hours.
- *Kaufmann AZ Earl, LLC v. Arizona Department of Gaming, Superior Court Maricopa County*. This is a landlord/tenant suit alleging negligent damage of the Department’s prior offices. The sole issue was whether any damage occurred, beyond normal wear and tear. Because digital photographic evidence was key to the case, the meta-data for Plaintiff’s evidence photographs, which were apparently “photo-shopped,” was critical. At issue was Plaintiff’s ability to prove its economic damages for alleged repairs. Discovery conducted

by the State convinced Plaintiff to dismiss the suit with prejudice in February of this year.



**OFFICE OF THE ARIZONA ATTORNEY GENERAL**

**TOM HORNE  
ATTORNEY GENERAL**

**CIVIL DIVISION**

**RICHARD RICE  
DIVISION CHIEF**

**FY2013 ANNUAL REPORT – EXECUTIVE SUMMARY**

**APPENDIX D**

**CIVIL DIVISION SUMMARY**

**Richard Rice, Division Chief**

The Civil Division consists of seven sections: Education and Health, Employment Law, Liability Management, Licensing and Enforcement, Natural Resources, Tax, and Transportation. The Division also has Senior Litigation Counsel that handles complex litigation through the Division and office. The sections handle a wide variety of legal matters on various topics and provide client advice, legal representation and litigation support in administrative, civil and appellate issues.

**EDUCATION AND HEALTH SECTION (EHS)**

**Kevin Ray, Section Chief**

***Craven, et al. v. Tom Horne, et al.***

Parents and students that attend various charter schools brought an action against the State of Arizona, the Arizona Department of Education, and Superintendent of Public Instruction claiming that the manner in which the Legislature funds charter schools violates the general and uniform clause and equal protection clause of the Arizona Constitution. The Court granted the State defendants' motion for summary judgment, dismissing plaintiffs' challenge to the State's school finance system.

***Hobday, et al v. Tom Horne, et al.***

Parents and students from the Prescott Unified and Lake Havasu Unified School Districts brought an action against the State of Arizona, the Arizona Department of Education and the Superintendent of Public Instruction claiming the education funding system violates the general and uniform and equal protection clauses. The Court granted the Defendants' Motion to Dismiss which means that the State will not have to change the way school districts are funded.

### ***SVP Daubert Hearing***

Sexually violent persons (SVP) that are housed at the ACPTC must be evaluated annually to determine whether or not it is appropriate for them to be moved from total confinement status to a less restrictive alternative status and/or be recommended for absolute discharge. These annual evaluations are done by psychologist evaluators.

An SVP seeking discharge from the ACPTC requested a *Daubert* hearing to prevent the ACPTC's evaluating psychologist from testifying at the annual review hearing. This is a matter of first impression for experts doing these types of evaluations in the State.

### ***NAGTRI Fellowship***

One Health Unit attorney participated in the first National Attorneys General Training and Research Institute Public Health Law Fellows Program funded by a grant from the Robert Wood Johnson Foundation. Only eight assistant attorney generals from across the country were selected to participate in the fellowship program. The Health Unit attorney's paper on improving tuberculosis treatment and control among removable aliens was singled out for its excellence and has been proposed for publication in a leading health care journal.

### **EMPLOYMENT LAW SECTION (ELS)**

**Dennis Carpenter, Section Chief**

#### **ELS Provided Advice and Support to the State on the Implementation of the State's Personnel Reform**

On September 29, 2012, the most sweeping personnel reform of state government in fifty years went into effect. ELS played a significant and vital role in this process. ELS assisted the Arizona Department of Administration (ADOA) in the drafting of the new State Personnel Rules and providing advice on how both the new rules and statutes would be implemented and interpreted.

#### ***Acuna v. AHCCCS***

AHCCCS terminated an employee for failing to adequately assess medical eligibility for several applicants of the Arizona Long Term Care Services (ALTCS) program. ALTCS individuals are the most frail and vulnerable of AHCCCS applicants and members. The employee appealed the termination. Ultimately, the Personnel Board denied the employee's appeal and upheld the dismissal.

#### ***Sample v. ADOT***

In 1993, Sample sustained a crush injury to his left foot/ankle. Over the years, Sample has had numerous surgeries to his left foot/ankle, all paid for by State Risk Management. In 2012, the applicant filed a petition to reopen his claim, asking that the State now pay for

amputation surgery due to severe pain complaints in the left foot/ankle. The State's experts argued against amputation, noting that the procedure is irreversible, would not diminish applicant's pain complaints, the condition of the left foot/ankle did not warrant amputation surgery. The State was successful in persuading the ALJ to adopt the opinions of the State's medical experts, thus saving Sample's left foot/ankle from unnecessary amputation.

## **LICENSING ENFORCEMENT SECTION (LES)**

**John Tellier, Section Chief**

The Licensing Enforcement Section provides legal services to 43 State agencies, boards and commissions, most of which regulate professions, occupations, or businesses.

### **Major Case Highlights:**

Successfully pursued an action to obtain a contempt citation against a licensee who refused to obey a previous court order enforcing an administrative subpoena.

### **Major Accomplishments:**

Negotiated a consent order requiring payments of \$160,000 in civil penalties to the Liquor Department, along with changes in business practices by liquor distributors.

Assisted client agencies in obtaining civil penalties and fines totaling \$1,055,767.50.

### **Other Savings to State Agencies:**

Successfully defended claims against the Registrars Residential Contractors Recovery Fund totaling in excess of \$100,000.

## **LIABILITY MANAGEMENT SECTION (LMS)**

**Terry Harrison, Section Chief**

### ***Sayer v. State of Arizona***

In *Sayer*, the jury returned a verdict in favor of the State following a three week trial. The Plaintiffs alleged the State was negligent because an elk entered the highway near Payson and was the cause of their motorcycle crashing. The jury found the State's plan and actions to warn of the possible presence of elk on the highway, as well as steps taken to keep elk off of the highway, were reasonable and appropriate.

### ***Morris v. State of Arizona***

The jury returned a defense verdict for the State in a case where the Plaintiff alleged the Probation Department failed to provide adequate background and threat information about a probationer who was to be arrested by a task force. When the task force arrived to make the arrest, the probationer shot both members. The jury found the Probation

Department had provided necessary information to inform the task force of the type of individual who was to be arrested.

**Major Accomplishments:**

This year the Liability Management Section defended cases against the State and its employees at an hourly rate of \$105.00. In comparison, outside counsel retained by the State primarily in conflict situations is very expensive. The average hourly rate for outside counsel this year was \$192.00. The number of non-conflict tort cases referred to outside counsel dropped to seven (7), a decrease of more than 60% from FY11-12.

**Dollars Saved:**

For cases closed in FY12-13 the Tort Unit received claims against the State totaling over \$247 million and closed them for \$4,364,968, a tremendous savings to the State. The DOC Unit closed 191 cases in FY12-13 for only \$257,709 that was paid out to claimants, another tremendous savings to the State.

**NATURAL RESOURCES SECTION (NRS)**

**Theresa Craig, Section Chief**

The Natural Resources Section provides representation to a variety of State agencies, primarily the Arizona State Land Department. That Department manages over eight million acres of State Trust Lands and NRS is called upon to assist on many legal issues involving Federal and State laws.

**Major Accomplishments:**

**State Trust Land Revenues**

The section continues to provide substantial support to the State Land Department in achieving its mission to generate revenues for public purposes, including the support of the common schools.

***Rumery v. State***

An important issue – the question of the constitutionality of state legislation authorizing the use of trust monies to support the Land Department’s administration of the trust – was decided, providing guidance to the State.

***Matthews v. Maricopa County et al.***

NRS, representing the State Land Department, championed the State’s position that its lessee was required to comply with county building codes, unless the State Land Commissioner exercised state authority to control the conduct.



**Monies Saved or Generated:**

**State Trust Land Revenue**

NRS provided legal advice that supported the Land Department's generation of approximately \$122,879,297.00 in sale and long-term lease revenue during the fiscal year.

**Roles Inn Purchase Application**

After accomplishing a settlement of an underlying judicial review action, NRS assisted the Department in working through a complicated sale transaction that generated \$4,489,570.

**TAX SECTION (TAX)**

**Jerry Fries, Section Chief**

***Gila River Power v. ADOR***

TAX successfully defended ADOR against separate use tax refund claims totaling \$78,300,000 related to Gila River Power's out of state natural gas purchasers. Gila River Power ultimately dismissed its claims and paid ADOR an additional \$230,000 in underpayments revealed by an ADOR audit.

***Level 3 Communications v. ADOR***

Following a four week jury trial TAX obtained a verdict denying a claimed tax refund of approximately \$2,700,000.

***New Harquahala Generating Co. v. ADOR***

After a two week bench trial TAX defeated a claim for tax refunds totaling approximately \$14,000,000 and obtained a tax payment to Maricopa County in the amount of \$3,300,000.

***Virgin Mobile USA v. ADOR***

TAX prevailed before Division 1 of the Court of Appeals. Virgin Mobile sought a refund of \$619,148.86 in Arizona taxes on its prepaid wireless telephone services. Virgin Mobile took the position that the "911 tax," collected under ARS 42-5252(A) for the purpose of funding emergency telecom services, was inapplicable to prepaid wireless service providers. The Court of Appeals upheld a prior decision in ADOR's favor, holding Arizona can tax such services.

**Major Accomplishments:**

TAX collected or negotiated payment agreements totaling \$2,910,235 related to income, fuel and aircraft license taxes.

**Dollars Generated or Saved:**

Cost savings to the State from work by attorneys in the Tax Unit measured by the amount of ultimate settlements or verdicts in comparison to the amounts demanded in the form of tax refunds or otherwise contested in tax appeals was an amazing \$195,725,078.00. Because successful tax appeals frequently give rise to “copy cat cases” on the part of similarly situated taxpayers, the actual amount saved is significantly higher.

**TRANSPORATION SECTION (TRN)**

**William Jameson, Section Chief**

The Transportation Section provides legal services to the Arizona Department of Transportation (ADOT) on a wide variety of matters. These include litigation and advice related to acquisition of real property needed for highway construction purposes, construction contracts, motor vehicle registration and driver licensing issues. We also represent the Arizona Department of Public Safety (DPS) in regard to a host of licensing and certification issues, including concealed weapon permits, private investigators and security guards, criminal history record information, and a statewide sex offender registration database.

***State v. LaSalvia***

This was a condemnation case, originally filed as an advance acquisition to acquire a portion of a larger parcel needed for the South Mountain Loop 202 freeway. Over a 6 month period, TRN systematically defeated every counterclaim, including “tortious interference” with property, trespass, coercion and duress, unjust enrichment, deprivation of due process and deprivation of a jury trial, through a series of motions to dismiss and motions for summary judgment. The State was awarded attorney fees in the amount of \$4,781.

**Major Accomplishments:**

TRN provided legal advice to ADOT in order to assist with drafting and enactment of new administrative rules permitting expansion of the Logo Sign Program into Arizona’s urban areas. The program is expected to generate \$8,000,000 in additional net cash.

**Dollars Generated or Saved:**

Cost savings to the State resulting from work by attorneys in the Condemnation Unit measured by the amount of ultimate settlements or verdicts in comparison to the amounts demanded as just compensation or damages was \$22,197,071.00.



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**FY2013 ANNUAL REPORT**

**APPENDIX D**

**CIVIL DIVISION MISSION**

*A dynamic legal team representing Arizona with integrity, dedication and innovation.*

**CIVIL DIVISION SUMMARY**

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**Senior Litigation Counsel**

**Michael Tryon, Sr. Litigation Counsel**  
**David Weinzweig, Sr. Litigation Counsel**  
**Evan Hiller, Assistant Attorney General**

**Major Case Highlights:**

***Vong v Aune (Fish Pedicure)***

Mike Tryon, Senior Litigation Counsel  
Evan Hiller, AAG, Civil Division  
Bridget Harrington, AAG, Licensing and Enforcement Section

Mike, Evan, and Bridget successfully defended a lawsuit brought against the Arizona Board of Cosmetology by the Goldwater Institute on behalf of a licensed cosmetologist. The lawsuit challenged the Board's prohibition of "fish pedicures." The case, which was on remand from the Court of Appeals, involved various constitutional law claims. The two-day bench trial involved testimony

from the Board's executive director and investigator, the cosmetologist, and competing expert witnesses. The Court ruled that the Board's actions were constitutional. This successful outcome was possible through Bridget's hard work, professionalism, and dedication as the Board's primary counselor; through Evan's trial advocacy and brief-writing; and through Mike's leadership, experience, and supervision.

## **EDUCATION AND HEALTH SECTION (EHS)**

**Kevin Ray, Section Chief**

The Education and Health Section generally provides legal services to the Arizona Department of Health Services (including the Arizona State Hospital, the Division of Behavioral Health Services, and the Bureau of Emergency Medical Services), the Department of Education, the School Facilities Board, the Arizona State School for the Deaf and Blind, and the Charter School Board.

### **Education Unit:**

The Education Unit represents the Arizona Department of Education (ADE), the Superintendent of Public Instruction, the Arizona State Board of Education, the Arizona Schools for the Deaf and the Blind, the Commission for Postsecondary Education, the State Board for Charter Schools, the School Facilities Board, the Early Childhood Development and Health Board, the English Language Learners Task Force, and the Professional Practices Advisory Committee.

### **Major Case Highlights:**

#### ***Acosta v. Huppenthal (Ethnic Studies)***

Teachers and students in the Tucson Unified School District's Mexican American Studies Department brought a 42 U.S.C. § 1983 constitutional tort action against the Superintendent of Public Instruction of the ADE and the individual members of the Board of Education (collectively, the "Board") in federal District Court for Arizona. The action alleged that the Superintendent and the Board of Education violated their constitutional rights by enforcing A.R.S. § 15-112, a law prohibiting courses that promote the overthrow of the U.S. government, that promote resentment toward a race or class of people, that are designed primarily for pupils of a particular ethnic group, or advocate ethnic solidarity instead of the treatment of pupils as individuals. The Court ruled primarily in favor of the Superintendent and the Board on the parties' cross-motions for summary judgment, invalidating the provision of the law that prohibited courses "designed primarily for pupils of a particular ethnic group." Plaintiffs filed an appeal in the Ninth Circuit. Defendants cross-appealed. Briefing will begin in the fall of 2013.

***Arizona v. Maricopa County Community College District (In-state tuition for DACA-recipients)***

In the last week of June 2013, the Education Unit filed a complaint against the Maricopa County Community College District (MCCCD), seeking declaratory and injunctive relief related to MCCCD's decision to allow students who are DACA-eligible to pay in-state tuition (if they meet Arizona's residency requirements). DACA refers to Deferred Action against Childhood Arrivals, a program of the United State Department of Homeland Security, to exercise its prosecutorial discretion to defer prosecution of certain individuals brought to the United States illegally as children. The State alleges that MCCCD is violating state law (A.R.S. §§ 15-1803 and 1825), which prohibit community colleges from giving in-state tuition to illegal aliens, and federal law (42 U.S.C. § 1621), which prohibits states from granting most state and local public benefits, including in-state tuition, to most illegal aliens (unless a state passes a law affirmatively granting a right to such benefits after August 22, 1996).

***Cave Creek Unified School District v. Dean Martin, State of AZ (Prop 301)***

Plaintiffs brought suit in the Superior Court for injunctive and declaratory relief, alleging that that the legislative budget violated both Proposition 301 inflation adjustment provisions and the voter protection act. The Education Unit handled the matter at the trial level and the Solicitor General's Office took over at the appellate stage. While the Superior Court agreed with the State, the Arizona Court of Appeals found that the Voter Protection Act required the Legislature to appropriate the inflation increases in education funding. The Solicitor General's office petitioned the Arizona Supreme Court for review, which it granted. Oral argument was held on July 23, 2013 and the matter is under advisement.

***Craven, et al. v. Tom Horne, et al.***

Parents and students that attend various charter schools brought an action against the State of Arizona, the Arizona Department of Education, and Superintendent of Public Instruction claiming that the manner in which the Legislature funds charter schools violates the general and uniform clause and equal protection clause of the Arizona Constitution. The Court granted the State defendants' motion for summary judgment, dismissing plaintiffs' challenge to the State's school finance system. Plaintiffs' timely appealed on July 10, 2013.

***Fisher v. Tucson Unified School District (TUSD desegregation case)***

On behalf of the State of Arizona, the Attorney General moved to intervene in an ongoing school desegregation case in the United States District Court for the District of Arizona in Tucson. The State sought limited party status to provide input on the multi-ethnic curricula being developed by the parties and

the Special Master, an education specialist, in the proposed Unitary Status Plan (USP). The State argued that the implementation of ethnic studies courses by TUSD pursuant to the proposed USP would unconstitutionally usurp the State's right to administer its laws. The Court denied Arizona's motions to intervene and implemented a USP that required multicultural curricula and curricula designed for specific groups over Arizona's objections. Arizona is appealing the denial of intervention to the Ninth Circuit Court of Appeals.

***Hobday, et al v. Tom Horne, et al.***

Parents and students from the Prescott Unified and Lake Havasu Unified School Districts brought an action against the State of Arizona, the Arizona Department of Education and the Superintendent of Public Instruction claiming that although the State has an equalized funding system because the system allows school districts to bond and pass tax levy overrides, the education funding system violates the general and uniform and equal protection clauses. The Court granted the Defendants' Motion to Dismiss the general and uniform claim. Defendants' victory means that the State will not have to change the way school districts are funded.

***Niehaus v. Huppenthal***

Taxpayers brought an action challenging the constitutionality of the Empowerment Scholarship Account (ESA) Program, A.R.S. §§ 15-2401 -2404. That scholarship program allows parents of students with disabilities to contract with the Department of Education to accept a scholarship in the amount of 90% of the base support level in exchange for agreeing to provide their students with an education with the monies received through several statutory options. Plaintiffs challenged the constitutionality of this program in the Superior Court, alleging that it violated the Aid Clause and the Religion Clause in the Arizona Constitution. The Superior Court found in favor of the Superintendent and the intervenor-defendants, the Goldwater Institute and the Institute for Justice. The plaintiff's appealed, oral argument has been held and the parties are awaiting the decision of the Court of Appeals.

**Major Accomplishments:**

- Advised the School Facilities Board (SFB) in connection with the 2013 Refunding of 2005 Bonds, including drafting revisions to the documents necessary for the SFB to proceed to the closing of the sale of the refunded bonds. Refunding the bonds will result in savings of \$16 million; the savings will benefit the Classroom Site Fund.
- Assisted the Department of Education's audit unit in connection with the audit of Red Mesa Unified School District. It agreed to repay \$2.3 million over five years.

- Represented the Department of Education in connection with efforts to recover misspent federal funds from schools, resulting in agreements to repay the following amounts: Heritage Elementary School: \$11,000; Allsport Academy: \$38,000; Phoenix Collegiate Academy: \$52,000; Luz Academy: \$23,000. The Education Unit also successfully represented the Department in connection with a proceeding to prevent World School Foundation from receiving approximately \$150,000 in remaining monies under a grant, after it violated the terms of that grant.
- Continued representation of the Department in connection with two Office of Civil Rights enforcement actions against the Department, alleging violations of the rights of limited English proficient students.
- Assisted the State Board of Education teacher disciplinary process, by preparing over 20 complaints which resulted in disciplinary actions ranging from suspension to revocation. Unit attorneys represented the Board in nine hearings. There were six negotiated settlement agreements and 11 teachers surrendered their licenses.
- Represented the State Board for Charter Schools in seven administrative proceedings pertaining to the denial, revocation and non-renewal of charters.

**Dollars Generated or Saved:**

The Education Unit attorneys represented the ADE in recovering misspent funds from schools, resulting in agreements to repay the State in the sum of \$124,000. Additionally, Education Unit attorneys also saved \$150,000 by blocking grant funding to an unscrupulous school foundation.

**General Accomplishments:**

***Arizona Department of Education (ADE)***

- Provided day-to-day client advice on special education, school improvement, school finance, federal grant programs, health and nutrition programs, academic standards, trademark, copyright, student assessment, and procurement matters.
- Provided advice and assisted ADE in pursuing recoveries of misspent or overpaid federal funds from charter schools that have ceased operations in Arizona.

- Assisted ADE in the development of procedures and in the administration of the ESA program that allows qualifying students to receive a scholarship from the state to attend private schools.

#### ***Professional Practices Advisory Committee (PPAC)***

- Provided legal advice to Investigative Unit staff for the Board of Education.
- Prepared complaints for hearings, settlement agreements, drafted form letters, and answered public records requests.
- Represented the State in disciplinary hearings before the PPAC.
- Resolved contested cases through settlement agreements and voluntary surrenders of certificates.
- Collaborated with the Investigative Unit and Board of Education Staff regarding proposed disciplinary actions and investigations through regular certificate enforcement team meetings.

#### ***Arizona State Board of Education (ASBE)***

- Provided day-to-day client advice to Board of Education staff.
- Attended all Board of Education meetings to advise the Board.
- Participated in School District Procurement Rules committee with members of school districts and the Arizona Auditor General's office.

#### ***Arizona State Schools for the Deaf and the Blind (ASDB)***

- Provided day-to-day client advice to ASDB staff.
- Reviewed and revised ASDB Board meeting agendas for compliance with Open Meeting Law and attended ASDB Board meetings as requested to advise the Board.
- In cooperation with the Employment Law Unit, advised the Board regarding personnel and grievance issues.

#### ***Arizona State Board for Charter Schools (ASBCS)***

- Provided day-to-day client advice to Charter Board staff.



- Reviewed and revised Charter Board meeting agendas for compliance with Open Meeting Law and attended all Charter Board meetings to advise the Board.
- Advised the State Board for Charter Schools in connection with development of its Academic Performance Framework and in drafting legislation to provide it authority to revoke a charter school's charter for poor academic performance.

***Certification Appeals Advisory Committee (CAAC)***

- Prepared one Notice of Hearing to the applicant alleging that the applicant did not meet the qualifications for a teaching certificate.
- Successfully represented the State in one hearing before the CAAC.

***Commission for Postsecondary Education (ACPE)***

- Reviewed agendas and provided advice to ACPE for compliance with Open Meeting Law requirements.
- Responded to the request from PricewaterhouseCoopers, LLP for the annual audit of Fidelity Arizona College Savings Plan.
- Reviewed financial disclosure kits required for 529 college savings plans from Fidelity Arizona, Waddell and Reed, and College Savings Bank for compliance with federal, state and local requirements including the College Savings Plans Network Disclosure Statement #5 and Internal Revenue Service requirements.
- Drafted recommended changes to the License Agreement between the ACPE and the Southern Regional Education Board to utilize software for the Go Alliance Collaborative Counseling Training Initiative and Use of Training Modules for School Counselor Curriculum between the ACPE and Arizona participants.
- Drafted recommended changes to the agreement between ACPE, on behalf of the Arizona College Access Network, and the National Student Clearinghouse for student tracking.
- Provided legal advice on draft policies and procedures for the Mathematics, Science, and Special Education Loan Forgiveness Program.

### ***ECDH/First Things First (FTF)***

- Provided day-to-day client advice on personnel issues, conflict of interest issues, procurements issues and federal grant requirements
- Advised FTF regarding open meeting law issues and public records requests.
- Assisted with review and/or drafting of contracts.
- Advised FTF in connection with its regional grant process.

### ***School Facilities Board (SFB)***

- Provided day-to-day client advice on personnel issues, conflict of interest issues, procurements issues and federal grant requirements.
- Advised SFB regarding open meeting law issues and public records requests.
- Drafted revisions of various contracts to comply with new statutory requirements for SFB administered funds.
- Advised SFB on various issues concerning the distribution of funds to school districts that have converted district school facilities to district-sponsored district operated charter schools.

### ***Attorney General Opinion Requests***

- Reviewed several school district opinions and prepared two opinions.

### ***Open Meeting Law Complaint Investigations***

- Completed the investigation of one open meeting law complaint alleging violations against the Sunnyside Unified School District finding no violation.
- Began investigating three open meeting law complaints (Fredonia-Moccasin Yuma County Airport Authority, Pine Strawberry Water Improvement District School)

### **Health Unit:**

The Health Unit represents the Arizona Department of Health Services (ADHS), including the Arizona State Hospital, the Division of Behavioral Health, the Division of Licensing Services, and the Division of Public Health, including the State Lab. In addition, the Unit also represents the Arizona Commission for the Deaf and Hard of Hearing.

**Major Case Highlights:**

***Arnold v. Sarn***

This case was filed on March 26, 1981, as a special action in the Maricopa County Superior Court, on behalf of a class of individuals designated as “seriously mentally ill” (“SMI”). Plaintiffs alleged the ADHS, Arizona State Hospital, and Maricopa County (collectively, “Defendants”) breached their statutory duty by failing to create a comprehensive system of community-based mental healthcare for indigent SMI in Maricopa County pursuant to A.R.S. § 36-550 *et seq.* The case proceeded to trial in 1985, and final judgment was entered on August 1, 1986. The case was appealed and heard by the Arizona Supreme Court, which affirmed the trial court’s decision in favor of Plaintiffs in 1989. A Court Monitor was appointed by the Court in 1991. The parties negotiated an Exit Stipulation in 1996, and in 1998, the parties agreed to the entry of a Supplemental Agreement, which described the specific standards and obligations for implementing the Exit Stipulation.

In February of 2010, the parties entered into a stipulation which sought the stay of the Court’s oversight of the case for two years, and an agreement by the parties to re-negotiate many of the various obligations of the Defendants. The corresponding order was entered by the Court on March 9, 2010. After ten months of negotiations between the parties, a second Agreement was reached on May 17, 2012, and subsequently approved by the Court on June 14, 2012. The Agreement is to remain in effect until June 30, 2014. The parties further agreed to meet beginning in June of 2013 to negotiate whether to extend, amend or revise the Agreement for the period beginning July 1, 2014, and to negotiate exit criteria for this case as set forth in Paragraph 19 of the Stay Order. The first meeting is scheduled for July 31, 2013.

***In re J.K.***

This case was filed in 1991 in the U.S. District Court, District of Arizona, as a class action by children eligible for or in need of behavioral health services funded under Title XIX of the Social Security Act. ADHS and AHCCCS are the named Defendants. In March of 2001 the parties entered into a Settlement Agreement (“Agreement”), which was approved by the Court in June of 2001, and contained an end date of July 1, 2007.

Defendants filed their Motion to Terminate the Court’s Jurisdiction on March 4, 2011. The Court denied the Motion to Terminate on February 27, 2012, and appointed former Supreme Court Justice Ruth McGregor as the special master in this matter, to determine the remaining issues for trial. The Special Master recommended that the majority of the Plaintiffs’ remaining claims be dismissed. On July 9, 2013, Judge Tashima issued an Order denying the Plaintiffs’ objections to that recommendation and set an evidentiary hearing on

November 18, 2013, to address the few remaining claims advanced by Plaintiffs. This reduction in the remaining claims of the Plaintiffs means that the State and AHCCCS are close to finally having this case end—thereby relieving the State Defendants from oversight by the Plaintiffs and the attendant monetary savings realized.

***Magellan Complete Care of Arizona, Inc. v. Arizona Department of Health Services (RBHA Contract Protest/Appeal)***

Health Unit attorneys are currently defending ADHS in Magellan's protest and appeal of ADHS' award of the new \$1 billion annual Maricopa County RBHA integrated health care contract to Mercy Maricopa Integrated Care (MMIC). This is the first RBHA contract that requires the Contractor to manage both the physical and mental health needs of the patients covered by the State's public behavioral health system. The implementation of this contract should sharply improve medical outcomes for Seriously Mentally Ill (SMI) patients, who die on average years earlier than non-SMI patients. ADOA has referred this protest/appeal to OAH for hearing. The hearing involves four parties: ADHS, AHCCCS, Magellan, and MMIC. OAH has set initial administrative hearing dates beginning on September 18, 2013.

***In re ABC Ambulance (Certificate of Necessity)***

The Health Unit represented the Bureau of Emergency Medical Services and Trauma System in a twelve-day administrative hearing regarding ABC Ambulance's application for a Certificate of Necessity for ambulance service in Maricopa County. The hearing included three intervenor parties opposed to the application. All post-hearing briefing was completed in June, and the case is now pending with the Administrative Law Judge.

***SVP Daubert Hearing***

The Health Unit represents the Arizona Community Protection and Treatment Center (ACPTC) located on the grounds of the State Hospital. Sexually violent persons (SVP) that are housed at the ACPTC must be evaluated annually to determine whether or not it is appropriate for them to be moved from total confinement status to a less restrictive alternative (LRA) status and/or be recommended for absolute discharge. These annual evaluations are done by ACPTC psychologist evaluators. The annual evaluations are filed with the Court and, if the SVP requests a change in his status and/or an absolute discharge, the evaluator will testify at the evidentiary hearing.

Arizona has recently shifted to the federal *Daubert* standard governing the admissibility of expert testimony. An SVP seeking discharge from the ACPTC requested a *Daubert* hearing to prevent the ACPTC's evaluating psychologist from testifying at the annual review hearing. Other SVPs joined in this matter,

and the Court has set the request for a *Daubert* hearing in late September to determine whether the ACPTC's evaluators can meet the *Daubert* standard for expert testimony. This is a matter of first impression for experts doing these types of evaluations in the State.

***White Mountain Health Center, Inc., et al. v. County of Maricopa, et al. (medical marijuana)***

Plaintiff, a medical marijuana dispensary applicant, filed a Superior Court Special Action lawsuit against Maricopa County, ADHS, and its Director Will Humble, on June 19, 2012, seeking mandamus and declaratory and injunctive relief. Plaintiff sought mandamus relief against Maricopa County for its failure to execute a zoning authorization for Plaintiff's proposed medical marijuana dispensary located in Sun City. Plaintiff sought a preliminary injunction against ADHS and Will Humble to prevent ADHS from denying its application for a medical marijuana dispensary for the failure to obtain necessary zoning authorization. Maricopa County defended its inaction by claiming that the Arizona Medical Marijuana Act (AMMA) was pre-empted by federal law. A temporary restraining order and a preliminary injunction was entered on July 23, 2012, enjoining ADHS from denying Plaintiff's application for a medical marijuana dispensary registration certificate pending a decision on the mandamus claim against the County. On August 23, 2012, the State *ex rel* Attorney General Thomas Horne (State) filed a Motion to Intervene on behalf of the State of Arizona in the case, also arguing that the AMMA is partially preempted by federal law.

On December 5, 2012, Superior Court Judge Michael Gordon issued a ruling that the AMMA was not preempted by federal law and granted mandamus relief against the County. The County Defendants and the State have both filed appealed the pre-emption issue to the Court of Appeals. The Judge also determined that there are no remaining claims against the ADHS Defendants, other than the injunction currently in place to keep Plaintiff's dispensary application from being denied pending the outcome of the remaining zoning issue with Maricopa County. The Plaintiff is proceeding to a hearing against Maricopa County on the reasonableness of the zoning restriction adopted by the County. Plaintiff and Maricopa County are scheduled to have that hearing on September 3 and 4, 2013.

**Major Accomplishments:**

- Successfully defended and dismissed three Superior Court lawsuits and one Federal Court lawsuit against the Governor and/or ADHS and its Director for claims based on the implementation of the AMMA.

- Successfully defended a Court of Appeals decision affirming that an ASH patient's grievance was properly dismissed by arguing against the granting of review by the Arizona Supreme Court.
- Successfully defended a Court of Appeals decision in favor of the ADHS in an appeal brought by the Pima County Human Rights Committee, which opposed the ADHS' decision to replace Mortality Review Forms with a Quality of Care Concern process. The Court of Appeals affirmed the Superior Court's dismissal of the Special Action petition.
- Successfully defended two Special Action appeals brought by sexually violent persons committed to the ACPTC seeking a discharge.
- Conducted 298 hearings before the Superior Court and before the Psychiatric Security Review Board for the ASH regarding civil mental health commitments, guardianships, competency hearings, and forensic patient hearings.
- Conducted 15 evidentiary hearings in Superior Court and filed numerous motions and responses in Superior Court for the ACPTC regarding the continuing commitment of sexually violent persons.

### ***Arizona Appellate Handbook***

- Health Unit attorneys participated in editorial meetings and drafted/edited a chapter on the Arizona Department of Health Services for the Arizona Appellate Handbook.

### ***NAGTRI Fellowship***

- One Health Unit attorney participated in the first National Attorneys General Training and Research Institute Public Health Law Fellows Program funded by a grant from the Robert Wood Johnson Foundation. Only eight assistant attorney generals from across the country were selected to participate in the fellowship program. The fellowship program consisted of a meeting in Washington, D.C. that included tours of various public health agencies and discussions with key public health professionals. It further required each of the assistant attorney general fellows to write a paper addressing an issue of public health importance and ultimately present the paper at Columbia Law School. The Health Unit attorney's paper on improving tuberculosis treatment and control among removable aliens was singled out for its excellence and has been proposed for publication in a leading health care journal.

**Dollars Generated or Saved:**

***Civil Money Penalties***

- The Health Unit attorneys participate in the review, negotiation, and prosecution of administrative enforcement actions taken by ADHS against licensed persons or entities. The sum total of all administrative reimbursements and civil money penalties assessed by the ADHS for FY 2013 is \$490,252.

**General Accomplishments:**

***Arizona Commission for the Deaf and Hard of Hearing***

- Advised/represented the Commission on investigations into violations of Arizona statutes and rules concerning sign language interpreters.

***Arizona Department of Health Services (ADHS)***

- Represented the Bureau of Nutrition and Physical Activity, Women, Infant, and Children Program (WIC) in eight informal settlement conferences, one successful administrative hearing, and in a successful appeal of a prior administrative decision in the Superior Court. These settlements and decisions supported denials or revocations of WIC providers who were diverting monies or otherwise failing to meet their legal obligations.
- Successfully defended ADHS' denial of petition to add additional qualifying conditions to the AMMA.
- Successfully defended ADHS in four behavioral health-related administrative hearings.
- Successfully represented ADHS in five vital records-related administrative enforcement matters.
- Successfully represented ADHS in one child care licensing administrative enforcement hearing and appeal, and participated in numerous enforcement meetings with child care providers.
- Successfully represented ADHS in an assisted living administrative enforcement hearing and appeal.
- Successfully represented ADHS in an administrative enforcement hearing and appeal denying the renewal of a midwife's license because the licensee engaged in practices outside her scope of practice.

- Defended depositions of ADHS employees in the *United Food Group v. Cargill* lawsuit.
- Represented ASH in over 80 treatment team staffings for patients represented by counsel.
- Provided three judicial-guidance memos to Superior Court Judges on vital records cases involving requested amendments to original birth certificates.
- Reviewed and filed 75 annual reports in Superior Court regarding sexually violent persons committed to the Arizona Community Protection and Treatment Center.
- Section attorneys reviewed 417 contracts for ADHS procurement, including IGAs, ISAs, RFPs and MOUs.

### ***Conferences and Meetings***

- A Health Unit attorney presented at the Arizona Crisis Standards of Care - Initial Planning Workshop regarding the application of Arizona's laws to public health emergencies.
- A Health Unit attorney participated in the 4<sup>th</sup> Annual U.S.-Mexico Border Tuberculosis Consortium Meeting as part of the Legal Issues Workgroup.
- Two Health Unit attorneys attended the 2012 Public Health Law Conference that included a meeting of state public health counsel.

### ***Trainings***

- Conducted Open Meeting law and Conflicts of Interest training sessions at ADHS.

### ***Open Meeting Law***

- Concluded two cases for the Open Meeting Law Enforcement Team of the Attorney General's Office.

### ***Task Force Against Senior Abuse (TASA)***

- One Health Unit attorney participates in TASA advisory group and TASA meetings to provide advice regarding the statutory scheme for the regulation of licensed residential health care institutions that provide services to the elderly and vulnerable adults.



## **EMPLOYMENT LAW SECTION (ELS)**

**Dennis Carpenter, Section Chief**

The Employment Law Section has three main functions: provide employment law advice to state agencies and represent the State in employee appeals from personnel actions; defend the State, its agencies and employees in employment lawsuits brought by current, former or prospective employees; and defend the State and Risk Management in contested workers compensation cases.

This year saw the implementation of the largest overhaul of the State's personnel system in fifty years and ELS played a vital role advising the State on this implementation. ELS also represented the State in workers compensation and litigation matters that would otherwise have been referred to outside counsel, thus saving the State money.

### **ELS Advice and Hearing Unit:**

#### **Major Accomplishments:**

#### **ELS Provided Advice and Support to the State on the Implementation of the State's Personnel Reform**

On September 29, 2012, the most sweeping personnel reform of state government in fifty years went into effect. ELS played a significant and vital role in this process. ELS assisted the Arizona Department of Administration (ADOA) in the drafting of the new State Personnel Rules and providing advice on how both the new rules and statutes would be implemented and interpreted. ELS also assisted both ADOA and outside counsel in developing a four-hour supervisors training program which was then used to train over 6,000 state supervisors in the fall of 2012. In January of 2013, ELS took over the actual training of all new state supervisors on behalf of ADOA; this training will be provided by ELS four times a year.

#### **ELS Provided Timely and Accurate Employment Law Advice**

ELS provided over 2411 hours of legal advice to State human resources professionals and managers on a wide range of day-to-day employment issues such as employee performance, preventing workplace violence, employee discipline, accommodating individuals with disabilities, and leave under the Family and Medical Leave Act. This was a 23% increase over the previous year and included a great deal of advice to state agencies about their own implementation of personnel reform.

#### **ELS Capably Represented State Agencies in Administrative Appeals**

ELS opened 40 new administrative appeals and spent, 2,417 hours on administrative hearings. Significant matters include the following:

### ***Acuna v. AHCCCS***

AHCCCS terminated an employee for failing to adequately assess medical eligibility for several applicants of the Arizona Long Term Care Services (ALTCS) program. ALTCS individuals are the most frail and vulnerable of AHCCCS applicants and members. Incomplete or incorrect determinations such as delays or denials in eligibility determinations for these individuals puts them at extreme risk if they cannot access the medical services they need. The employee appealed the termination. A subsequent hearing involved a review of the medical determination process and presentation of complex evidence in a clear and concise manner. Ultimately, the Personnel Board denied the employee's appeal and upheld the dismissal.

### ***Elliot v. Yavapai County Adult Probation Department***

The agency terminated the employee, an Adult Probation Officer, for failing to properly supervise felony probationers in violation of Arizona Revised Statutes, Codes of Judicial Administration, Departmental Policy, and Judicial Canons and also for falsifying documents to the court. Of particular concern was his failure to provide third party notification to some individuals affected by a client's conviction. After a hearing before the Yavapai County Merit Commission, the Commission upheld Adult Probation's decision to terminate the employee and denied the appeal.

### **Workers Compensation**

ELS's workers compensation group opened 142 new matters and closed 143 matters, numbers which are slightly increased from the past three years. ELS lawyers and legal assistants billed 4003 hours to workers compensation matters. The following matter was particularly significant:

### ***Sample v. ADOT***

In 1993, Sample sustained a crush injury to his left foot/ankle. The Claim was accepted. Over the years, Sample has had numerous surgeries to his left foot/ankle, all paid for by State Risk Management. In 2012, the applicant filed a petition to reopen his claim, asking that the State now pay for amputation surgery due to severe pain complaints in the left foot/ankle. State Risk Management denied reopening and sought multiple expert medical opinions regarding the medical necessity for amputation. The State hired its own medical experts, i.e., an orthopedic surgeon, a pain management physician, and a psychologist. The State's experts

argued against amputation, noting that the procedure is irreversible, would not diminish applicant's pain complaints, the condition of the left foot/ankle did not warrant amputation surgery, and Sample's expectations regarding amputation were not realistic. The Administrative Law Judge (ALJ) adopted the opinions of the State's medical experts and did not award Sample the requested amputation surgery. The State was successful in persuading the ALJ to adopt the opinions of the State's medical experts, thus saving Sample's left foot/ankle from unnecessary amputation.

## **Litigation**

ELS represented the State in employment lawsuits covered by the State's self-insurance program, as well as non-risk management cases. ELS opened files for 21 new risk-management lawsuits during the last fiscal year and attorneys and legal assistants billed over 11,122 hours on risk-management litigation matters. In addition, ELS attorneys also spent 1093 hours representing client agencies in administrative review actions and non-risk management special actions and lawsuits in superior court.

### ***Rexroat v. Arizona Department of Education (ADE)***

Rexroat sued ADE alleging her compensation constituted unlawful sex discrimination in violation of the Equal Pay Act, Title VII, and the Arizona Civil Right Act (ACRA). The court granted ADE's motion for judgment on the pleadings, and dismissed the Title VII and ACRA claims. After discovery, Rexroat's counsel filed a motion seeking to reopen discovery, and to add three employees as plaintiffs and an overtime claim under the Fair Labor Standards Act (FLSA). The court denied that motion (and the other three employees filed a separate lawsuit). Rexroat and ADE filed cross-motions for summary judgment. The court granted summary judgment in favor of ADE, finding Rexroat had failed to show a violation of the EPA, and that ADE's compensation decisions were based on a legitimate factor other than sex. (Rexroat has appealed the judgment.) After the Rexroat judgment against the plaintiff, two of the other ADE employees in the companion lawsuit voluntarily withdrew from the case, and the third employee quickly settled with ADE and dismissed her lawsuit.

### ***Shoukry v. Arizona Board of Regents***

Dr. Shoukry was employed with the University of Arizona, Department of Psychiatry as a medical resident. Dr. Shoukry had an altercation with another medical resident for which he was found to have violated the University's workplace violence policy, and was

dismissed from his residency program. Dr. Shoukry challenged his dismissal on due process grounds. While that administrative process was pending, he filed a lawsuit in federal court against five physicians and their spouses and he sought a preliminary injunction. The Defendants moved to dismiss the lawsuit and opposed the preliminary injunction request. The Court allowed the lawsuit to proceed, but denied Dr. Shoukry's request for a preliminary injunction. Dr. Shoukry's due process challenge to his dismissal was unsuccessful, and the lawsuit was later resolved.

### ***Cameron v. Arizona Board of Regents***

Dr. Cameron had alleged that she was terminated from her teaching position at Arizona State University (ASU) because she was an African-American female, had complained of discrimination, and was disabled. The majority of Dr. Cameron's claims were defeated at summary judgment. A two-week trial was held on the race and retaliation claims in 2011. At the end of Dr. Cameron's case, the District Court granted judgment as a matter of law in favor of the state defendants. Dr. Cameron appealed and argued that the case should have been submitted to the jury. While it is difficult to uphold a judgment as a matter of law at the Ninth Circuit because the standard of review greatly favors the plaintiff, the Court ruled in favor of ASU within one week of oral argument.

### ***Pettit v. Arizona Board of Regents***

This case began in 2005 and alleged fourteen counts against seventeen defendants. The District Court dismissed all but one claim prior to trial. In 2011, the case was litigated on the single issue of whether Dr. Pettit had a property right in his director and endowed chair positions at ASU. The court split the judgment and held that Pettit held a property right in one position but not the other. Both parties appealed the ruling. At the Ninth Circuit, the Court ruled entirely in the University's favor. It held that Dr. Pettit did not have a property right in either position (overturning the District Court).

## **Discrimination Charges**

ELS monitored and assisted agencies in responding to 80 new charges of discrimination filed with the federal Equal Employment Opportunity Commission, similar to the number of charges in previous years. In addition, ELS attorneys provided advice and support on a number of internal charges of discrimination within state agencies, including a series of very high profile discrimination

complaints involving the Arizona State Schools for the Deaf and the Blind. ELS closed 27 discrimination charges.

**LICENSING ENFORCEMENT SECTION (LES)**

**John Tellier, Section Chief**

The Licensing Enforcement Section provides legal services to 43 State agencies, boards and commissions, most of which regulate professions, occupations, or businesses. The Section provides legal advice to clients regarding their statutes and rules and topics such as open meetings and public records. Additionally, the Section represents clients in litigation related to administrative hearings against licenses and defends appeals of agency actions in Superior Court.

**Major Case Highlights:**

Successfully defended the Cosmetology Board in a challenge to the constitutionality of the Board’s ban on “fish pedicures.”

Achieved the dismissal of three special actions brought against the Registrar of Contractors.

Successfully pursued an action to obtain a contempt citation against a licensee who refused to obey a previous court order enforcing an administrative subpoena.

**Major Accomplishments:**

Negotiated a consent order requiring payments of \$160,000 in civil penalties to the Liquor Department, along with changes in business practices by liquor distributors.

Assisted client agencies in obtaining civil penalties and fines as follows:

Accountancy Board	\$18,500.00
Registrar of Contractors	\$126,995.00
Respiratory Care Board	\$3,675.00
Department of Racing	\$12,452.50
Medical Radiologic Technicians Board	\$2,925.00
Pharmacy Board	\$22,000.00
Board of Cosmetology	\$81,870.00
Nursing Board	\$13,250.00
Medical Board	\$2,000.00
Liquor Department	\$172,000.00
Barber Board	\$1,000.00
Naturopathic Board	\$5,000.00
Athletic Trainer	\$500.00

Board of Technical Registration	1,000.00
Weights and Measures	
Through hearings	\$12,700.00
Through consent agreements	<u>\$579,900.00</u>
	\$1,055,767.50

**Cost Reimbursements:**

Accountancy Board	\$57,031.43
Medical Radiologic Technicians Board	\$918.00
Cosmetology Board	<u>\$133,380.00</u>
	\$191,329.43

**Other Savings to State Agencies:**

Successfully defended claims against the Registrars Residential Contractors Recovery Fund totaling in excess of \$100,000.

**LIABILITY MANAGEMENT SECTION (LMS)**

**Terry Harrison, Section Chief**

The Liability Management Section represents the State in Risk Management covered lawsuits alleging liability for personal injuries, property damage and constitutional law violations. The Section consists of an ADOT Unit, Tort Unit, DOC Unit, Appeals Unit and a Tucson Unit (which handles cases in Southern Arizona).

**Major Case Highlights:**

***Sayer v. State of Arizona***

In *Sayer*, the jury returned a verdict in favor of the State following a three week trial. The Plaintiffs alleged the State was negligent because an elk entered the highway near Payson and was the cause of their motorcycle crashing. The jury found the State’s plan and actions to warn of the possible presence of elk on the highway, as well as steps taken to keep elk off of the highway, were reasonable and appropriate.

***Fleming v. State of Arizona***

Plaintiffs alleged the State/DPS were negligent because officers failed to quickly remove a drunken driver to a safe location off of the highway where she had been stopped. During the stop process, another vehicle left the travel lanes of the highway and struck the rear of the patrol unit in which the decedent was seated, and she was killed instantly. The jury rejected Plaintiffs arguments, and placed fault on the driver of the other car and on the decedent. The defense verdict was reached after a two week trial.

***Morris v. State of Arizona***

The jury returned a defense verdict for the State in a case where the Plaintiff alleged the Probation Department failed to provide adequate background and threat information about a probationer who was to be arrested by a task force. When the task force arrived to make the arrest, the probationer shot both members. The jury found the Probation Department had provided necessary information to inform the task force of the type of individual who was to be arrested, and that if more information was needed by the task force it could have asked for it. Members of the task force did not wear body armor when attempting to arrest the probationer.

**Major Accomplishments:**

This year the Liability Management Section defended cases against the State and its employees at an hourly rate of \$105.00. LMS takes pride in its ability to provide high quality legal work to its clients and Risk Management at a reasonable cost. In comparison, outside counsel retained by the State primarily in conflict situations is very expensive. The average hourly rate for outside counsel this year was \$192.00. The difference results in a substantial cost savings to the State of Arizona when legal work is performed by LMS. LMS continues to reach for its goal of sending only conflict cases to outside counsel. The number of non-conflict tort cases referred to outside counsel dropped to seven (7), a decrease of more than 60% from FY11-12.

Additionally, the Section was able to close 100 cases in the Tort Unit and 191 cases in the DOC Unit.

**Dollars Saved:**

For cases closed in FY12-13 the Tort Unit received claims against the State totaling over \$247 million and closed them for \$4,364,968, a tremendous savings to the State. The DOC Unit closed 191 cases in FY12-13 for only \$257,709 that was paid out to claimants, another tremendous savings to the State.

**NATURAL RESOURCES SECTION (NRS)**

**Theresa Craig, Section Chief**

The Natural Resources Section provides representation to a variety of State agencies, primarily the Arizona State Land Department. That Department manages over eight million acres of State Trust Lands and NRS is called upon to assist on many legal issues involving Federal and State laws governing urban and rural development, preservations easements, archaeological and mining issues, and water rights claims on State trust lands. NRS also provides legal counsel to Arizona State Parks, Prescott Historical Society, Arizona Department of Mines and minerals, State Mine Inspector, Board of Geographic and Historic Names, Arizona Geological Survey, State Forester, and the State Geologist. NRS also

reviews plans submitted by counties and municipalities to ensure planning and zoning is compatible with the operation of nearby military airport facilities.

**Major Accomplishments:**

**State Trust Land Revenues**

The section continues to provide substantial support to the State Land Department in achieving its mission to generate revenues for public purposes, including the support of the common schools. There have been continued effects from the recent real estate market decline, with payment extensions, defaults and cancellations of Certificates of Purchase, however the Land Department continues to generate significant revenues from sales and long-term leases. NRS attorneys were instrumental in providing advice on these transactions in preparing and reviewing the documents that facilitated transactions, as well as advising the Department regarding extensions.

**Significant Matters:**

**Proceedings before the Arizona Navigable Streams Adjudication Commission**

NRS continues to represent the State Land Commissioner in proceedings before the Navigable Streams Adjudication Commission's (ANSAC) to determine the status of Arizona Rivers as navigable or non-navigable. The ANSAC is responsible for determining the navigability of six of Arizona's watercourses for title purposes. The State Land Commissioner has a statutory duty to advocate for the public trust, to promote public trust interests, and challenge the ANSAC's decisions as necessary to protect public trust interests. NRS attorneys continue to represent the State Land Commissioner, and filed multiple briefs on various issues including the import of recent case law including *PPL Montana* and its impacts on the ANSAC determination on whether Arizona's rivers are navigable or not.

**ASLD Purchase and Lease Workouts**

NRS continues to work with the State Land Department in its efforts to accomplish commercially reasonable workouts with installment purchasers and long term ground tenants who have been unable due to market conditions to meet scheduled installment purchase payment obligations, ground lease rent obligations. The NRS attorneys have assisted the Department in restructuring these transactions within the parameters of applicable legislation governing extensions and modifications.



**Major Case Highlights:**

**Appeal of Commissioner's Order Denying New Lease Application, Office of Administrative Hearings**

NRS successfully defended the Land Commissioner's decision to cancel a commercial lease.

***Rumery v. State***

An important issue – the question of the constitutionality of state legislation authorizing the use of trust monies to support the Land Department's administration of the trust – was decided, providing guidance to the State.

***Wildearth Guardians v. State Land Department***

NRS filed a response and cross-appeal briefs in the Court of Appeals against a challenge to the Commissioner's decision to award a grazing lease to one of two applicants.

***Matthews v. Maricopa County et al.***

NRS, representing the State Land Department, championed the State's position that its lessee was required to comply with county building codes, unless the State Land Commissioner exercised state authority to control the conduct. In an administrative hearing involving cancellation of the lease on the same property, NRS successfully defended the Arizona State Land Commissioner's decision to cancel the lease.

**Monies Saved or Generated:**

**State Trust Land Revenue**

NRS provided legal advice that supported the Land Department's generation of approximately \$122,879,297.00 in sale and long-term lease revenue during the fiscal year.

**Roles Inn Purchase Application**

After accomplishing a settlement of an underlying judicial review action, NRS assisted the Department in working through a complicated sale transaction that generated \$4,489,570.

## **TAX SECTION (TAX)**

**Jerry Fries, Section Chief**

The Tax Section represents the Department of Revenue (ADOR) on property tax, income tax, transaction privilege tax, corporate income and use tax matters; and represents the Department of Transportation on fuel tax and aviation registration matters.

### **Major Case Highlights:**

#### ***Gila River Power v. ADOR***

TAX successfully defended ADOR against separate use tax refund claims totaling \$78,300,000 related to Gila River Power's out of state natural gas purchasers. Gila River Power ultimately dismissed its claims and paid ADOR an additional \$230,000 in underpayments revealed by an ADOR audit.

#### ***Level 3 Communications v. ADOR***

Following a four week jury trial TAX obtained a verdict denying a claimed tax refund of approximately \$2,700,000.

#### ***New Harquahala Generating Co. v. ADOR***

After a two week bench trial TAX defeated a claim for tax refunds totaling approximately \$14,000,000 and obtained a tax payment to Maricopa County in the amount of \$3,300,000.

#### ***Penn Racquet Sorts v. ADOR***

TAX prevailed on a Motion for Summary Judgment. Penn Racquet challenged ADOR's depreciation formula that is utilized by all county assessors in valuing locally assessed personal property. Millions, if not tens of millions, in taxes were at risk. The matter is currently on appeal.

#### ***Virgin Mobile USA v. ADOR***

TAX prevailed before Division 1 of the Court of Appeals. Virgin Mobile sought a refund of \$619,148.86 in Arizona taxes on its prepaid wireless telephone services. Virgin Mobile took the position that the "911 tax," collected under ARS 42-5252(A) for the purpose of funding emergency telecom services, was inapplicable to prepaid wireless service providers. The Court of Appeals upheld a prior decision in ADOR's favor, holding Arizona can tax such services so long as there is a nexus to Arizona and the tax does not run afoul of the Commerce Clause.

### ***Home Depot v. ADOR***

TAX prevailed before Division 1 of the Arizona Court of Appeals. Home Depot filed a bad debt claim of \$1,449,496, plus interest, for reimbursement of transaction privilege taxes paid on credit card purchases by customers who later defaulted on their payments. The purchases were made on Home Depot's "private label credit cards," cards that exist pursuant to finance agreements between Home Depot and several finance companies. Under those agreements, finance companies pay the entire purchase price plus applicable taxes to Home Depot. Home Depot then pays the transaction privilege tax to the State. Noting that Home Depot had received all of its money up front, the Court of Appeals held it was not entitled to tax refunds based on later deductions for bad debts.

### ***Stearn v. ADOR***

TAX prevailed on a Motion for Summary Judgment. Plaintiff challenged the method of calculating credit for taxes paid in other states and countries, and sought refunds on behalf of themselves and a class of similarly situated taxpayers. The case was dismissed before the class was actually certified. Had the class been certified and the case not been dismissed, there would have been as much as \$100,000,000 at issue.

### **Major Accomplishments:**

TAX collected or negotiated payment agreements totaling \$2,910,235 related to income, fuel and aircraft license taxes.

### **Dollars Generated or Saved:**

Cost savings to the State from work by attorneys in the Tax Unit measured by the amount of ultimate settlements or verdicts in comparison to the amounts demanded in the form of tax refunds or otherwise contested in tax appeals was an amazing \$195,725,078.00. Because successful tax appeals frequently give rise to "copy cat cases" on the part of similarly situated taxpayers, the actual amount saved is significantly higher.

## **TRANSPORTATION SECTION (TRN)**

**William Jameson, Section Chief**

The Transportation Section provides legal services to the Arizona Department of Transportation (ADOT) on a wide variety of matters. These include litigation and advice related to acquisition of real property needed for highway construction purposes, construction contracts, motor vehicle registration and driver licensing issues. We provide legal advice to the Aeronautics Division of ADOT, which oversees the Grand Canyon Airport, and to Arizona Highways Magazine. Representation and advice are provided on procurement matters, IGA's, grant agreements, personnel matters, property management, public records, and open

meetings. We also represent the Arizona Department of Public Safety (DPS) in regard to a host of licensing and certification issues, including concealed weapon permits, private investigators and security guards, criminal history record information, and a statewide sex offender registration database.

Representation is also provided to a wide range of boards, commissions and committees, including the Transportation Board, the Priority Planning Action Committee, the Law Enforcement Merit System Council, the Over-Dimensional Permit Council, the Arizona Council for D.U.I. Abatement, the Arizona Motorcycle Safety Advisory Committee, the Citizens Transportation Oversight Committee, the Arizona Companion Animal Spay and Neuter Committee, ADOT's Homeland Security Committee and MVD's Medical Advisory Board.

Attorneys representing the MVD protect the safety of Arizona drivers by defending administrative decisions which are subsequently appealed to Superior Court, and then to the Arizona Court of Appeals. These actions are primarily related to suspension of driving privileges.

Attorneys representing the Department of Public Safety prosecute/defend suspensions and denials of certifications related to private investigator and security guard licenses, school bus driver certifications, concealed weapons permits, and other matters regulated by DPS.

### **Major Case Highlights:**

#### ***State v. Carson***

This matter consisted of 2 consolidated condemnation cases filed to acquire two small portions of adjoining commercial parcels for improvement of SR 89 in Flagstaff. Filed in 2005, the case was complicated by cross claims filed on behalf of existing tenants against the fee owner. TRN succeeded in obtaining a Partial Summary Judgment awarding compensation in the amount of \$51,044, based on the State's appraisal. The Carsons appealed, essentially arguing the State should be liable for any rent reduction ultimately awarded to the tenants in the separate contractual cross claims. After 8 years of litigation, TRN successfully defended the Partial Summary Judgment before the Arizona Court of Appeals on 4/9/13.

#### ***State v. LaSalvia***

This was a condemnation case, originally filed as an advance acquisition to acquire a portion of a larger parcel needed for the South Mountain Loop 202 freeway. While ADOT subsequently agreed to purchase the entire 260 acre parcel, and the condemnation action was dismissed, the property owner was allowed to file an amended counterclaim. Over a 6 month period, TRN systematically defeated every counterclaim, including "tortious interference" with property, trespass, coercion and duress, unjust enrichment, deprivation of due process and deprivation of a jury trial,

through a series of motions to dismiss and motions for summary judgment. The State was awarded attorney fees in the amount of \$4,781.

**Major Accomplishments:**

TRN provided legal advice to ADOT in order to assist with drafting and enactment of new administrative rules permitting expansion of the Logo Sign Program into Arizona's urban areas. The new rules were approved by the GRRC on May 7, 2013, and the program is expected to generate \$8,000,000 in additional net cash. The money will be deposited into the State Highway Fund.

TRN invested substantial time and effort helping ADOT prepare its first ever "Request for Qualifications & Conceptual Proposals" under ARS 28-7701 *et seq.*, which authorize "public private partnerships", or "P3" contracts. The Request is aimed at relocating ADOT's current Flagstaff office and operations while acquiring new facilities at no cost to the Department. The P3 statutes allow contracts utilizing a variety of delivery methods not otherwise available, ranging from design-build to design-build-finance-operate-manage and maintain.

TRN provided substantial assistance to ADOT in acquiring right of way for a state bypass route, "N20", which will be located within the Navajo Nation. This bypass route was a high priority, and necessary, due to the collapse of US 89 near Page, Arizona.

**Dollars Generated or Saved:**

Cost savings to the State resulting from work by attorneys in the Condemnation Unit measured by the amount of ultimate settlements or verdicts in comparison to the amounts demanded as just compensation or damages was \$22,197,071.00.

A total of \$9,250 was collected for motor carrier violations by TRN. The money was split three ways among MVD, DPS and AGO.



**OFFICE OF THE ARIZONA ATTORNEY GENERAL**

**TOM HORNE**  
**ATTORNEY GENERAL**

**CHILD AND FAMILY PROTECTION DIVISION**

**NICOLE DAVIS**  
**DIVISION CHIEF COUNSEL**

**FY2013 ANNUAL REPORT**

**APPENDIX E**

**MISSION and SUMMARY**

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

The Child and Family Protection Division (CFPD) provides comprehensive legal representation to ADES with more than 360 employees in locations statewide. CFPD is divided into three parts: Protective Services Section (PSS); Child Support Services Section (CSS); and Civil and Criminal Litigation and Advice Section (CLA). The Division also has an Appellate Practice Group that represents ADES in the Arizona Court of Appeals, Arizona Supreme Court, and the Federal District Courts. The Appellate Practice Group typically prevails in 97% of all appeals resolved.

**PROTECTIVE SERVICES SECTION**

The Protective Services Section of the Attorney General's Office provides comprehensive legal representation to ADES' Division of Children, Youth, and Families (DCYF). PSS shares the Department's goal of protecting abused and neglected children, providing services to preserve families, and achieving timely permanency for Arizona's children in foster care. The attorneys and staff in the PSS provide legal representation to DCYF throughout Arizona's 15 counties with offices located in Flagstaff, Gila/Pinal, Kingman, Mesa, Phoenix, Prescott, Sierra Vista, Tucson, and Yuma.

**Trial Practice:** PSS attorneys engage in a high-volume, fast-paced, litigation-focused practice in the Juvenile Division of the Arizona Superior Court. Trial attorneys in PSS handle thousands of legal actions each year, generally referred to as "dependency cases." These court processes involve dependency, guardianship, termination and adoption

proceedings. These proceedings serve to protect abused and neglected children in both in-home and out-of-home placements. The children are legally in the custody of the ADES and progress towards permanency is monitored by the courts. Protective and remedial social services are provided to the family to remedy the circumstances that brought the children into care in order to achieve successful reunification. If attempts to reunite families prove unsuccessful in a judicial or legislatively determined period of time, PSS attorneys represent ADES in actions to achieve the permanent placement of children through guardianship, severance of parental rights, and adoption proceedings.

**Policy & Training:** PSS lawyers advise ADES on a wide spectrum of legal issues arising from federal, state and agency statutes, rules, regulations, policies, procedures and court decisions. The PSS Litigation Support Unit trains all incoming PSS Assistant Attorneys General. The Litigation Support attorneys second chair trials, high profile cases and straight to severance cases. In addition, Litigation Support attorneys provide substantive and ongoing training to the PSS attorneys, CPS caseworkers and supervisors, members of the judiciary and various child welfare system stakeholders throughout Arizona.

**PSS Appellate Matters:** For PSS, the Child and Family Protection Division's Appellate Practice Group regularly appears before the Arizona Court of Appeals to defend (and where appropriate challenge) trial court decisions, and to file and respond to appeals and special actions. In FY2013, the Appeals Group filed 139 briefs on behalf of PSS and prevailed in 98% of all PSS appeals resolved. Additionally, the Appellate Practice Group handled 370 substantive motions or issues and reviewed an additional 70 motions written by PSS attorneys. The Court of Appeals issued four published opinions in FY 2013 in cases that were briefed by ADES. All four were affirmed in ADES's favor.

In addition to its regular appellate work, the Appellate Practice Group assisted the PSS by conducting training of new-hire attorneys and refresher training for all PSS attorneys at attorney meetings and brown-bags, researched and published a compendium of subject specific resource materials, provided training to the client on a variety of issues (particularly related to the Indian Child Welfare Act (ICWA)), assisted with revisions to the State Bar's Appellate Handbook, and collaborated with the Supreme Court's Administrative Office of the Courts to produce a guidebook for dependency appellate practitioners. Further, the Appellate Practice Group drafted and filed an amicus brief supported by seventeen other states supporting the Respondents in *Adoptive Couple v. Baby Girl*, a U.S. Supreme Court case addressing a variety of ICWA issues.

### **Accomplishments:**

In FY2013, PSS attorneys attended 76,740 court appearances; an increase of 12,595 court appearances over FY2012 (64,145). PSS attorneys represented ADES in trial a total of 6,203 days in FY2013; an increase of 1,095 days from FY2012 (5,108).

## Substantive Practice Changes:

- **"Baby Courts"** - During FY2013 Maricopa County assigned specific judicial divisions to hear dependency matters involving children under three years of age. These courts were designated as "Baby Courts". Hearings on these cases are on average every 60 to 90 days. There are considerably more hearings in Baby Court cases than a standard dependency case. Several other counties have begun to schedule more frequent hearings for cases with children under three years of age.
- **CHILDS** - During the summer of 2012, it was discovered that the CPS Childs Information and Library Data Source (CHILDS) database contained information that was not routinely disclosed to all parties as part of another CPS report. As a result, in September 2012, letters were sent to all parents and counsel on active dependency cases advising them of their right to request this additional CPS information. The Department received numerous requests for this CHILDS information. This disclosure put an additional burden on both the Department and the Attorney General's Office to comply with these requests, respond to motions from opposing counsel and attend hearings related to the CHILDS disclosure issue.

## In FY 2013 PSS Attorneys and Staff Statewide:

- Protected more than 16,793 children from abuse and neglect'
- Filed 4,839 new dependency petitions<sup>2</sup>
- Filed 2,124 severance motions and petitions<sup>3</sup>
- Filed 361 guardianship motions
- Filed 251 adoption petitions
- Reunited 1,424 children with their parents
- Placed 291 children with permanent guardians
- Assisted in the adoption of 1,226 children by relatives or foster parents

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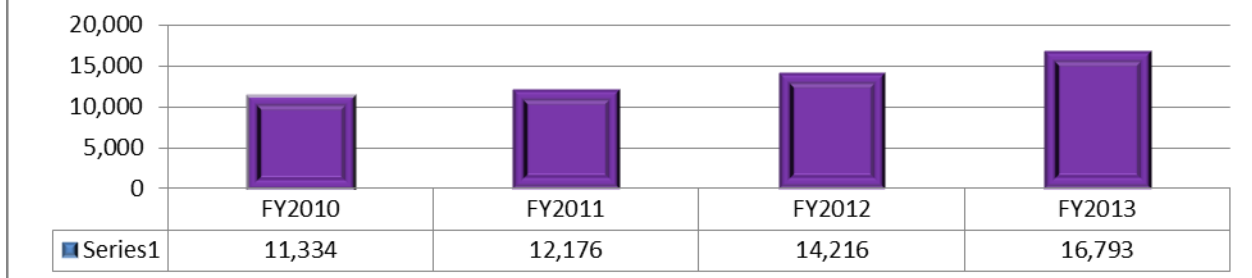
<sup>1</sup> CPS has seen a staggering increase in the number of children in CPS care this fiscal year. At the end of FY2012 there were 14,216 children in care. This increased by 2,577 children to bring the number of children in care at the end of FY2013 to 16,793. This 18.125% yearly increase in the number of children in care is directly correlated to the rise in dependency petition filings statewide.

<sup>2</sup> PSS filed 444 more dependency petitions in FY2013 than the previous fiscal year.

<sup>3</sup> Termination of parental rights is the primary permanent goal if reunification with a parent cannot be achieved. PSS has continued its efforts with the Case Permanency Review Process and the 24 month staffing to ensure timely review of cases for permanency and to identify grounds for, and barriers to, termination as early as possible. In addition, the straight to severance procedures implemented for cases in which reunification is determined not to be possible (i.e. severe abuse cases; surviving siblings in child death cases and new babies to parents whose rights were recently terminated) have freed children for adoption at a much earlier stage in the proceedings. During FY2013, there was a total increase of 411 severance motions and petitions filed from FY2012.

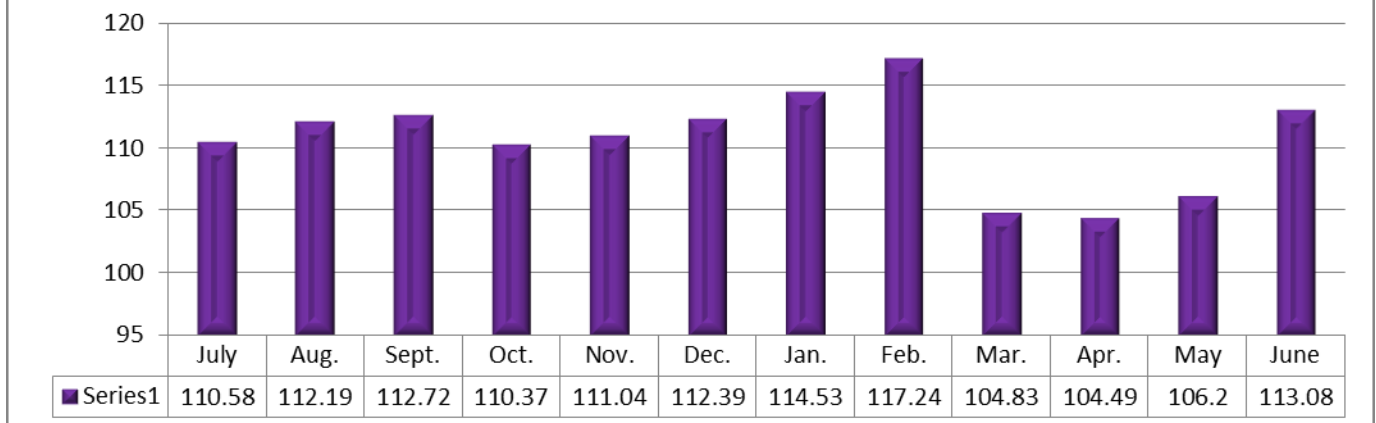


## COMPARISON OF CHILDREN IN DES CUSTODY FISCAL YEARS 2010 THROUGH 2013



Child Protective Services has seen a 48.16% increase in the number of children in care from the end of FY2010 to the end of FY2013.

## PSS ATTORNEY CASE LOADS BY MONTH DURING FISCAL YEAR 2013



The American Bar Association has recommended that the dependency caseload for an agency attorney should be no more than 60 cases.<sup>4</sup> As noted in the chart, PSS attorney caseloads in FY2013 were significantly higher than this standard.<sup>5</sup>

<sup>4</sup> The American Bar Association reflects a standard for a dependency attorney handling a trial caseload, preparing and managing their own appellate work and advising the client on policy matters. The PSS is structured differently and thus the per attorney standard is higher.

<sup>5</sup> The PSS has determined an appropriate caseload for trial attorneys to be approximately 85 cases per attorney. This takes into account that the Section has an Appellate Practice Group preparing and managing all appellate work and a Policy Team principally responsible for providing policy advice to DCYF.

## **CHILD SUPPORT SERVICES SECTION**

The Child Support Services Section (CSS) of the Attorney General's Office 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 Services (DCSS), who recently changed its name to better reflect its mission of service. CSS handles a high-volume litigation caseload to establish paternity and to establish, modify and enforce child support orders. CSS attorneys and staff are co-located with the client, DCSS, in 11 offices statewide in the following counties: Cochise, Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai and Yuma (note: the Pinal County program transitioned from the Pinal County Attorney to the Office of the Attorney General effective July 1, 2013). CSS also covers court hearings in the following 4 counties: Apache, Graham, Greenlee and Santa Cruz.

**Trial Practice:** CSS attorneys engage in a high-volume, fast paced litigation practice in the Family Court Division of Arizona's Superior Court. Because more than 44% 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, CSS may take legal action to pursue child support. Litigation also includes modifying and enforcing existing support orders. DCSS currently has more than 197,000 open child support cases statewide. The litigation caseload for CSS increased slightly from 8,331 cases at the close of FY2012 to 8,422 cases at the close of FY2013, averaging 384 cases per trial attorney. The CSS Bankruptcy Team currently handles over 400 Chapter 7 and Chapter 13 cases.

**Policy and Training:** CSS attorneys advise DCSS on various legal issues arising from federal and state statutes, regulations, policies, and court decisions. The CSS Training Team created training manuals for attorneys, support staff and supervisors in an ongoing effort to standardize practices across the state. In addition to overseeing the core training for all incoming staff, the CSS Training Team coordinated and presented two full day training programs for the attorneys and paralegals statewide, including the County Partners.

During FY2013, CSS and DCSS completed the process of transforming case files statewide from paper to electronic files and the Joint Imaging Task Force continued to re-engineer business practices and greatly improve efficiencies.

**CSS Appellate Matters:** In FY2013, the CFPD Appellate Practice Group successfully represented DCSS in a number of active and new appeals. Two dedicated attorneys wrote answering briefs in appeals filed by pro per litigants and resolved a number of cases through substantive motion filing. The Appellate Practice Group successfully participated as an amicus in a case that resulted in an opinion consistent with the State's policy regarding the Uniform Interstate Family Support Act (UIFSA).

In an effort to increase the level and quality of support provided to the CSS trial units, the CFPD Appellate Group dedicated two of its ten attorneys to handle all CSS appeals. These attorneys staff every case with an experienced reviewer from the Solicitor General's Office, have attended CSS training to increase their substantive knowledge, and have been able to assist the trial units by providing training on how to make a record that will stand solidly on appeal. In May 2013, the team developed a comprehensive resource guideline to assist other appellate attorneys with CSS appellate issues.

**In FY2013, CSS helped Arizona children receive the support to which they were entitled by:**

- Judicial establishment of paternity for 1,372 children<sup>6</sup>
- Establishing new child support orders for 4,046 families
- Obtaining child support judgments of over \$55.4 million Resolving 4,322 actions for modification of support
- Representing DCSS in over 26,400 court appearances
- Assisting DCSS to collect over \$361 million in support
- Increasing the collections for current support from .52:1 to .54:1 for every child support dollars owed
- In bankruptcy cases, collecting \$545,292.69 in support; a 32% increase from FY2012
- In non-Family Court litigation, collecting \$980,694.08 in support<sup>7</sup>

**Accomplishments:**

During the past fiscal year, the Child Support Services Section has been proactive in finding new ways to reach out to parents and to assist them with their child support legal issues. The CSS has spearheaded the following events:

**Veterans Outreach:** The CSS has been working with DCSS and with the AGO's Community Outreach area to find ways to better serve active military and veterans with child support issues. Veterans report child support as one of their top concerns. The

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<sup>6</sup> The Arizona IV-D Child Support Program is number one in the nation with respect to its efforts in establishment of paternity.

<sup>7</sup> Non-Family Court litigation consists of liens, foreclosures and settlements.

CSS participated in 6 Veterans StandDown events statewide, and regularly visit the Davis Monthan Air Force base to answer questions and provide child support information. The CSS presented at the Veterans Statewide Symposium with the AG Community Outreach liaison.

**Come to Court Events:** In an effort to increase child support collections without filing Petitions to Enforce, DCSS and CSS sent letters to over 2,500 obligors who had not made payments in over 12 months. These obligors were told to come to court on a specific date to make a payment or to meet with an attorney to explain why they had not paid for the past year. As a result of these early intervention events, CSS was able to get obligors on the right track by modifying or terminating orders, sending out new income withholding orders or encouraging them to start making payments.

**Qualified Domestic Relations Orders (QDRO):** The CSS Specialized Enforcement Unit drafted a QDRO to obtain child support arrears from a National Football League Retirement account. Proceeds received from the single account were over \$106,000. The knowledge gained from successfully researching and coordinating with the **NFL** to collect on this QDRO will likely result in future QDRO collections.

## **CIVIL AND CRIMINAL LITIGATION AND ADVICE**

The Civil and Criminal Litigation and Advice Section (CLA) of the Attorney General's Office provides legal advice and representation to all ADES programs except Child Protective Services and Child Support Enforcement. CLA advises and represents ADES in matters regarding ADES' business operations, including the review of service provider contracts, intergovernmental agreements, department policies, proposed legislation, personnel matters (including the hiring and discipline of employees), facilities management and the collection of debts owed to the agency by consumers for the overpayment or fraudulent collection of public benefits. CLA advises and represents the following ADES programs: Adoption and Guardianship Subsidies, Adult Protective Services, Procurement, Unemployment Insurance Benefits, Vocational Rehabilitation, Child Care Administration, Benefits and Medical Eligibility, SNAP, Cash Assistance, Foster Care Licensing, Developmental Disabilities, and the medical and dental program for dependent children, among others.

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

**CLA Appellate Matters:** For CLA, the CFPD Appellate Practice Group focuses on appeals from 1) unemployment insurance benefit overpayments, 2) denials of benefits coverage, and 3) timeliness of appeals. In FY2013 the Group addressed ten new Notices of Appeal, represented ADES in six appellate matters, and drafted and/or filed 26 substantive motions. Unlike other appeals, the Court exercises its

discretion on matters accepted for review. When a matter is accepted, the court is seeking fundamental error which results in significant research, internal review and subsequent client advice for the Group. Because of the discretionary nature of the review, the Appellate Practice Group prevailed in four of the six decisions rendered by the Court of Appeals, and obtained three published opinions clarifying various legal issues.

**In FY2013, the CLA Civil Practice Team:**

- Opened, litigated and/or reviewed 1252 administrative litigation and civil cases
- Opened and reviewed 184 contracts, leases, Intergovernmental Agreements and/or amendments
- Obtained 258 civil judgments in civil collections cases totaling \$701,539.23
- Secured an additional \$116,927.77 in civil collections without the need for reducing multiple matters to a judgment
- Collected \$322,821.19 through wage and bank garnishments
- Filed 358 civil collections cases
- Opened over 67 "matter" files for tracking significant legal advice provided to ADES
- Responded to over 1,384 subpoenas and requests for public records
- Assisted ADES with substantive advice on reinventing the Arizona Safety Net System

<b>Administrative Litigation and Civil Cases By Program</b>	<b>Total</b>
Adoption Subsidy	13
Adult Protective Services	8
Adult Protective Services Review Team	96
Aging and Adult Administration	1
Arizona Early Intervention Program-AzEIP	1
Bankruptcy	4
Cash Assistance	2
Child Protective Service	1
Childcare Administration	3
Civil and Criminal Litigation and Advice	1
Comprehensive Medical and Dental Program	3
Contracts/Leases/IGA	42
Department of Economic Security (DES/DMR)	1
Division of Benefits/Med Elig (DFS)	2
Division of Business & Finance (DBF)	1
Division of Develop Disab:Grievances	89
Division of Develop Disab:Long Term Care	52
Division of Developmental Disabilities	30
Equal Employ Opportunity Comm (Matters)	45
Food Stamp Administration	1
Foster Care Licensing	7
Guardian Subsidy	2
Internal Affairs I/A	19
Licensing/Agency	1
Medical Assistance Under DBME	16
Mental Health (CFY/CPS Cases)	55
Office of Equal Opportunity (OEO)	1
Personnel Division of Aging & Adult Services	9
Personnel Division of Benefits & Med Eligibility	43
Personnel Division of Business & Finance	1
Personnel Division of Child, Youth & Families	8
Personnel Division of Developmental Disabilities	45
Personnel Division of Employment of Rehabilitation Services	23
Div of Technology Services	1
Personnel Division of Child Support	10
Office of Accountability	2
Protective Services Review Team	188
Unemployment Insurance Benefits	337
Unemployment Insurance Contributions	52
Vocational Rehab & Blind Services	36
<b>GRAND TOTAL</b>	<b>1252</b>

**Civil Collections by Program**

Program	Filed	Judgments Entered	Total Judgments
Combination Cases	3	4	\$10,493.00
Day Care	1	0	0
Division of Developmental Disabilities	5	4	\$40,149.34
SNAP	5	2	\$2,598.00
SNAP Plus Another	0	1	\$1,413.50
Foster Care	1	1	\$1,476.96
Parental Assessment	3	3	\$7,552.00
Provider Child Care	1	0	0
Unemployment Insurance Benefits	339	243	\$637,856.43
<b>Grand Total</b>	<b>358</b>	<b>258</b>	<b>\$701,539.23</b>

**Civil Collections by Program**

Program	Collections Rec'd Judgment not Filed	Collections Without Reducing Matter to Judgment
Combination Cases	1	\$1,472.00
Division of Developmental Disabilities	2	\$5,074.32
SNAP	1	\$2,767.00
SNAP Plus Another	1	\$1,945.00
Unemployment Insurance Benefits	57	\$105,669.45
<b>Grand Total</b>	<b>62</b>	<b>\$116,927.77</b>

**Garnishment Collection Summary**

1 <sup>st</sup> Quarter 2013	\$65,853.96
2 <sup>nd</sup> Quarter 2013	\$88,457.72
3 <sup>rd</sup> Quarter 2013	\$85,021.89
4 <sup>th</sup> Quarter 2013	\$83,487.62
<b>Grand Total</b>	<b>\$322,821.19</b>

**In FY2013, the CLA Criminal Practice Team:**

- Filed 157 criminal cases
- Obtained 186 criminal sentences
- Obtained restitution orders totaling \$711,935.81
- Collected \$597,597.12 in restitution prior to sentencing
- Obtained orders for fines totaling \$16,600.00
- Obtained orders for 6828 hours of community service

<b>Criminal Cases</b>						
<b>Program</b>	<b>Cases Filed</b>	<b>Cases Sentenced</b>	<b>Restitution Ordered</b>	<b>Restitution Paid Prior to Sentencing</b>	<b>Fines Collected</b>	<b>Community Service</b>
Combination Case (SNAP & Cash Asst.)	1	3	\$9,223.00	\$3,351.00	\$200.00	80
SNAP	6	5	\$13,233.00	\$4,719.00	\$400.00	160
Unemployment Insurance Benefits	150	178	\$689,479.81	\$589,527.12	\$16,000.00	6,588
<b>Grand Totals</b>	<b>157</b>	<b>186</b>	<b>\$711,935.81</b>	<b>\$597,597.12</b>	<b>\$16,600.00</b>	<b>6,828</b>

**CLA Accomplishments:**

- U.S. Department of Health and Human Services Title IV-E Audit:** Each year, the Department of Economic Security (ADES) receives approximately \$130-150 million in federal funding for foster care under Title IV-E of the Social Security Act. Every three years, the Children’s Bureau of the Department of Health and Human Services conducts an audit to ensure that ADES is in compliance with federal requirements. The audit permits ADES to have only four cases found “in error” (out of a sample size of 80 cases). If more than four “in error” cases are identified, the agency is required to implement a performance improvement plan and undergo a secondary audit the following year with a sample size of 150 cases. Due in large part to the substantial assistance and advice provided to ADES by CLA attorneys and staff in the months leading up to the 2013 audit, as well as CLA’s onsite legal assistance during the audit, ADES passed the 2013 audit.
- Office of Child Welfare Investigations:** CLA was instrumental in supporting ADES’s efforts with Governor Brewer’s Child Safety Task Force, which recommended the creation of the Office of Child Welfare Investigations (“OCWI”). OCWI is tasked with conducting investigations related to criminal child abuse and neglect and criminal conduct allegations. CLA was involved at every stage of the creation of the OCWI from its conception to its recent implementation, including organizing and conducting extensive training sessions for the OCWI investigators, re-drafting legislation, and revising joint protocols for OCWI and Child Protective Services.
- Unemployment Insurance Benefits Cases:** CLA experienced an increase in the number of successfully completed criminal prosecutions concerning the wrongful receipt of unemployment insurance benefits and an increase in restitution paid prior to sentencing and ordered to be paid at sentencing.
- Employment Matters:** CLA possesses a 100% success rate for matters before the Arizona State Personnel Board in its representation of the Department of Economic Security (ADES) on personnel matters, which include dismissals, demotions, suspensions of more than 40 hours and whistleblower claims. With



this success, ADES has sought additional guidance on drafting Notice of Charges, the application of Americans with Disabilities Act regulations, Title XII and other civil rights laws applicable to ADES employees, in addition to revisions of several employment policies and advice on personnel reform.

- **Protective Services Review Team:** CLA's review and litigation of child and adult protective services cases involving abuse, neglect, and the exploitation of vulnerable populations resulted in 89 individuals placed on the Adult Protective Services Registry and over 65 individuals placed on the Child Protective Services Central Registry.



TOM HORNE  
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL  
ADMINISTRATIVE SERVICES DIVISION

DEBBIE JACKSON  
DIVISION DIRECTOR

FY2013 ANNUAL REPORT

APPENDIX F

**Administrative Services Division**

*The former Administrative Operations Division was reorganized in 2008. A portion of the former Division was moved to Finance and the remaining sections were renamed the Employee Services Division. In 2011, a re-organization occurred with the new Horne Administration. The Employee Services Division was changed to the Administrative Services Division (ASD) and includes Facilities Management and Planning, Human Resources and Procurement. Over the past 7 months, the Administrative Services Division has centralized and streamlined administrative processes across the agency. The ASD team members are focused on serving our clients efficiently and professionally with a progressive and team oriented approach.*

**Division Mission:**

The Administrative Services Division is committed to providing premier employee services through clear communication, employee training, and centralized processes in Human Resources, Procurement, and Facilities Management and Planning.

**Division Summary:**

The Administrative Services Division (ASD) consists of the Facilities Management and Planning (FMP) Section, the Human Resources Section (HRS) and Procurement. The ASD provides the office with the internal support and administrative services needed to properly and effectively carry out the Office's mission.

**Facilities Management and Planning Section:**

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

- Daily operations: the coordination of the maintenance, tenant improvement and telecommunications service requests across the Office as well as consultation with division management in the area of space planning.

- Safety and security: the program development and system oversight to include physical security system operations, as well as employee awareness campaigns designed to maximize personnel safety and security.
- Central services: the centralized shuttle transportation, mail room operation, receptionist and copy center services that support the needs of the Office.
- Continuation of Operations Planning (“COOP”): the development of plans and procedures to ensure that the Office can continue to perform essential functions during a wide range of emergencies.

### **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 main business areas drive our activities:

- Strategic workforce planning: to concentrate on the singular focus of attracting, developing, motivating and retaining a diverse, qualified workforce within a supportive work environment.
- Skilled consultation: to provide expertise in the areas of research and personnel policy development, employee relations, performance management, and benefit program implementation.
- Organizational development: to provide training opportunities to equip the Office’s employees with the shared values, commitment to mission, knowledge, and skills needed to accomplish extraordinary tasks in service of our state.
- Loss Prevention Program oversight: to ensure Office compliance, to include but not limited to, EEO agency plan implementation, ADA program development, employee grievance process oversight, and agency wide health and safety services.

### **Procurement Section:**

The Procurement group is responsible for direct contracting and purchasing goods and services as well as management of service contracts for the office.

### **Division Highlights:**

#### **Facilities Management and Planning:**

#### **2013**

- Worked with ADOA Construction Services and ISS to install new air conditioning unit in the Tucson officer computer server room.
- Worked with Procurement and the L3AV vendor with the install of new audio visual equipment in the 3<sup>rd</sup> floor conference room of the cap center. The new equipment improved the press box connections used for Attorney General press conferences.
- FMP worked with Procurement and Just in Time refrigeration on the acquisition of a new water/ice machine in the 3<sup>rd</sup> Floor employee break room.

- Assisted the Board of Appraisal on moving into the Capital Center.
- Completed the Law Building IT server room expansion.
- Worked with new Cap Center vending services operator to transition to our site.
- Worked with ADOA Tucson Facilities Management to provide custodial services to the AGO offices.
- Coordinated a deep cleaning of the law building restroom floors, north lobby floor, and 2<sup>nd</sup> floor west break room floor.
- Acquired a mail machine for the Prescott Office.
- Continuing to work with AZNet and ADOA on the phone upgrade for the Prescott Office.
- Worked with Procurement to replace the cubicle lost due to flood for the Library Director.
- Processed more than 135 internal equipment moves.
- Began working with DEMA on the updating of the Attorney General's Continuation of Operations (COOP) plan.
- Worked with ADOA Risk Management on the updating of the buildings "Emergency Action Plans."
- Worked with ADOA Risk Management and provided training to the Attorney General's Safety Team on the new Emergency Action Plan.
- Worked with ADOA Risk Management, DPS, and the U of A and provided training on workplace violence and the SHARE program.
- Continuation of the development of the safety to include future trainings and drills.
- Created emergency information cards for all AGO staff with emergency contact and mass communication information. Cards to be distributed FY14.
- Began identifying opportunities to expand the copy center. Purchased a new wire binding machine and supplies. Other possible equipment in FY14, include a new scanner and laminator.
- Procured a new electric date stamper for the Capital Center receptionist to log documents and deliveries.
- Created new Agency building floor plans to better track the available space. The new maps document employee names, position numbers, phone numbers and funding.
- Began the project with Financial Services and AZNet to audit active phone and fax numbers being paid for by the AGO. Through this audit, phone numbers will be disconnected as a cost savings to the State and the AGO and active phone lines are charged to the correct funding source.
- Developed a log of HVAC thermostat numbers.
- Began reviewing the Sections policies and procedures to increase productivity and work flow.
- From July 2012-June 2013, the Shuttle transported 4,587 passengers (3,764 from the Law Building and 823 from the Capital Center building) and drove 10,710 miles.
- From July 2012-June 2013, the Mailroom metered and sent out 134,756 pieces of mail totaling \$132,130.

- From July 2012-June 2013, FMP processed 762 maintenance work orders sent to ADOA General Services Division.
- From July 2012-June 2013, FMP processed 591 phone requests to AZNet.
- From July 2012-June 2013, the Law Building and Capital Center receptionists combined received more than 22,404 phone calls.
- From July 2012-June 2013, the Copy Center copied 164,051 black copies and 51,709 color copies; scanned 313,326 documents, copied 207 CDs, and spiral bound 86 books.

## 2012

- FMP assisted the Special Investigations Section to consolidate to one location within the Criminal Division Tucson main office, in suite 300.
- Worked with ADOA Construction Services and Firetrol in install an upgraded fire detection system in the Law building. Every office, hallway, and break room in now equipped with smoke or heat detectors that are programmed back to the main panel for history reporting purposes. The State Fire Marshal has inspected and passed the new system. This project was completed in October.
- FMP started working with ADOA Risk Management on developing a Safety Team. We are still in the process of finalizing the requirements for our Agency.
- We worked with FSS and ADOA Building and Planning to add a door and a frame to an office in FSS. This will provide privacy and security for the occupant.
- We worked with CIC to install a new Symposium call center system for their phones.
- We worked with FSS and ADOA Building and Planning to relocated an office door in room 157C. This improved productivity for FSS to have all offices opening to the center of the department.
- We worked with ADOA Custodial Services to provide centralized trash service on Friday afternoons in the Law and Capital Center buildings.
- We worked with ADOA Building and Planning to install dedicated circuits and media lighting in the Attorney General's media room.
- We worked with ADOA Building and Planning to have the previous purchased carpet for the 4<sup>th</sup> floor Capital Center lobby and lobby conference rooms, installed.
- FMP assisted the Border Crimes Enforcement Section to consolidate to one location within the Criminal Division Tucson main office, in suite 518.
- We worked with AZNet, Black Box, and CenturyLink to install a phone system in the new Prescott office. We are still adding and changing phone types and systems to fit the users in this office.
- We worked with ISS and ADOA Building and Planning to install a dedicated circuit in the ISS area for their copier. It was previously connected with extension cords possibly presenting a trip hazard.
- We worked with FSS and ADOA Building and Planning to relocate an office door in room 159D. This improved productivity for FSS to have all offices opening to the center of the department. This was completed in May 2012.
- We worked with ADOA Building and Planning to build an office in the ASD area. This project was completed in February.

- FMP started working with ADOA Building and Planning to renumber the interior of the Law building office suites. The room numbers have been assigned and ADOA is currently working with the contractors to reprogram building equipment with the new room numbers.
- We worked with ADOA Building and Planning to install an intercom in the BCEU area of the Criminal Division in Tucson. This project was completed in April.
- We worked with Pitney Bowes and purchased a new mailing machine with e-certified options. This will save us \$1.15 on each e-certified sent out, which is approximately \$230/year.
- We worked with PAD/CRD to relocate three employees from the 2<sup>nd</sup> floor, suite 223 at 400 W. Congress St. to the 3<sup>rd</sup> floor, suite 300 at 402 W. Congress St.
- We worked with ADOA Building and Planning to remove the wall between the copy center and the mail room. This will allow for copy center expansion and improve customer service. This project will be completed by 5/31.
- FMP has been working with ADOA Construction Services to expand the server room on the 1<sup>st</sup> floor east side of the Law building and to add a backup generator to power the UPS units.
- FMP is working with ADOA Building and Planning to install a handicap door operator on the 2<sup>nd</sup> floor center women's restroom.
- FMP is working with ADOA Construction Services to replace the existing carpet in the Basement of the Capital Center building. This will include the ISS former training area, the whole ISS suite, and Conference rooms A and B.
- The Law building was closed due to a flood. ASD/FMP worked with ADOA General Services Division to repair and replace all damaged furniture, flooring, etc. We successfully temporarily relocated 182 employees.
- FMP has been working with the Business Enterprise Program to close down the Capital Center Deli and remodel the area. They had added two new machines and are planning on having an open house for our employees in July.
- We worked with the Business Enterprise Program and ADOA General Services Division to install a new Coffee vending machine.
- FMP is working with Pitney Bowes to purchase a new mailing machine for the Tucson location.
- From July 2011-June 2012, the Shuttle transported 7,404 passengers (2,941 from the Law Building and 823 from the Capital Center building) and drove 12,950 miles.
- From July 2011-June 2012, the Copy Center copied 352,140 black copies and 45,921 color copies, scanned 252,108 documents, copied 449 CDs, and spiral bound 103 books.
- From July 2011-June 2012, the Mailroom metered and sent out 153,488 pieces of mail totaling \$150,474.00.
- From July 2011-June 2012, the Law Building and Capital Center receptionists combined received more than 20,500 phone calls.
- From July 2011-June 2012, FMP processed 1,500 maintenance work orders sent to ADOA General Services Division.
- From July 2011-June 2012, FMP processed 550 phone requests to AZNet.

## 2011

- FMP worked in conjunction with ADOA and Black Box to install several voice and data jacks in the Phoenix and Tucson locations to improve faxing, scanning, and printing capabilities to AGO employees.
- FMP worked with ADOA Building and Planning and contracted engineers on Energy Conservation projects in the Law Building including: retrofitting all light fixtures from four lamp ballasts to two lamp ballasts and replacing all light bulbs with more energy efficient bulbs throughout the building inside and outside, adding light sensors to all offices and hallways, changing the HVAC system from pneumatic to electric which includes changing all thermostats and connecting them and the VAV boxes to be controlled remotely by ADOA HVAC. This will result in substantial utilities savings for our Office and the State of Arizona.
- Worked with ADOA HVAC and APS to install all new energy efficient thermostats in the Capital Center Building.
- To increase security around the Capital Center Building and parking garage, installed three additional cameras with a digital video recorder.
- FMP coordinated loss prevention issues with ADOA Risk Management such as testing and assessing the current fire alarm systems in the Law and Capital Center Buildings, safety inspections, ergonomic evaluations, tracked and recorded loss trend analysis of Workers' Compensation Claims and took corrective action where possible to avoid repetitive claims and injuries.
- Daily operations continued at an increased pace. The section coordinated 868 telecommunications service requests, which includes relocations. FMP processed and tracked a total of 964 work orders with ADOA Facilities Operations and Maintenance.
- The AG Shuttle continued its valuable service transporting attorneys and other staff to and from court. During the FY2011, we carried 9,094 passengers and logged 13,046 miles.
- We implemented a new log for tracking incoming certified mail. FMP processed approximately 146,550 pieces of mail through the Law Building mailroom. Upgraded software for the mailing machine was installed, which has allowed us to easily track pieces of mail metered and postage used.
- FMP completed 1,167 copy center service requests through the central copy center. Replaced the existing color copier with a high speed copier that has scanning and emailing capabilities.

## 2010

- 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 developed a scope of work to correct deficiencies. Scope of work included fire safety inspections, review of building access procedures and the development of a *Violence in the Workplace Prevention Program*.

- Developed written procedures for FMP related processes and cross-trained FMP staff on procedures, improving both the consistency and efficiency of services to AGO employees.
- FMP coordinated loss prevention issues with ADOA Risk management such as fire and safety inspections, ergonomic evaluations and submittal of Worker's Compensation reports.
- AG shuttle continued to provide a valuable service, transporting attorneys, staff and documents to the courts and other agencies in the Capitol Mall area. During the year, the shuttle carried 7,738 passengers and logged a total of 14,170 miles. The shuttle saved valuable attorney time, and reduced agency dollars otherwise spent on reimbursed mileage and parking expenses. Additionally, the shuttle service reduced the agency carbon footprint for the year.
- During FY 2010, FMP processed a total of 659 work orders with ADOA Facilities Operations and Maintenance to repair, maintain and improve working conditions in the state buildings occupied by the Attorney General's Office.
- FMP managed 473 telecommunication service requests during the fiscal year.
- FMP processed approximately 164,500 pieces of mail through the Law Building mailroom.
- Completed 1,537 copy center service requests through the central copy center.

## **Human Resources Section**

### **2013**

- Modified the background check process to make more centralized. Completed training and updated applicable forms and templates.
- Managed 2013 open enrollment for AGO employees.
- Assisted in the transition of employees to Long Term Disability (LTD).
- Created new tracking system for FMLA to aid in the deployment of FMLA through HRIS in FY14.
- Updated required FMLA posters due to change in law. Posted in applicable areas.
- Providing Health & Wellness Events to the agency including email blasts, intranet updates and wellness courses, screenings and clinics (Nutrition Management Courses, Flu Shot, Prostate Onsite Project, Mobile Onsite Mammography, Blood Drives).
- Processed bi-annual Return Retiree Benefit Premium Subsidy reimbursement requests.
- Beginning stages of developing a new Employee Recognition Program, including brainstorming themes and incentives.
- Successfully managed and facilitated the annual Employee Recognition Awards.
- Attended training at ADOA on MAP implementation and roll-out.
- Updated the current evaluation process to the new MAP system.
- Provided classroom supervisor training and phone support on how to utilize the new MAP system within the AGO.



- Tracked receiving previous year evaluation documents and new performance planners for the 2013 evaluation year.
- FY2014 systems roll over. Worked with ADOA to update funding to the New Year.
- Participated in training and began development of the Employee Services sections of the new AGO intranet.
- Administered and managed a Law Clerk Program for more than 71 law students
- Executed Bi-Weekly New Employee Orientation.
- Updated Orientation to include ever changing information on personnel reform, evaluation process, and Benefits.
- Policy updates related to the implementation of the Personnel Reform in 10/2012.
- Help transition covered employees to uncovered positions. Completed applicable paperwork and audited HRIS to make sure employee transitioned correctly.
- Continuous updates of our policies and procedures and internal processes including managing the legislative changes for benefits, personnel reform, internal procedures, etc.
- Worked with ADOA on annual leave carry forward requests and accruals in HRIS.
- Coordination with PSPRS local board members for personnel actions related to special agents.
- Effectively implemented Division re-organizations.
- Processed and tracked all of the AGO's public information requests.
- Reviewed Attorney Recruitment Interview Structure and developed of the Attorney Hiring Committee.
- Implemented Talent Acquisition recruiting software. Submitted Agency requirements and modified the use of the new software due to the technical requirements needed to run the software.
- Coordinated AGO's participation and representation in Colleges and Universities seasonal onsite job fair events in Phoenix and Tucson.
- Maintained general employment advertisements on: the State Bar of Arizona webpage, Arizona Attorney Magazine monthly publication, Arizona Prosecuting Attorney's Advisory Council (APAAC), Career sites for ASU, Phoenix School of Law and UA and Social media sites such as Twitter, LinkedIn & Facebook.
- Completed annual OSHA Reporting for the 2012 calendar year.
- Completed OSHA Fed Survey Response
- Attended Governor's Office EEO meeting and completed 2013 EEOC Plan.
- Completed Bi-weekly pay period ending report audits.
- Created PowerPoint on Division Services.
- Monitored comp time accruals for policy compliance.
- Implemented monthly organizational chart audits.
- Reviewed monthly reports from Tom Horne for policy and procedure changes and employee kudos.
- Identified Return Retirees for PSPRS and ASRS Alternate Contribution Rate (ACR) and completed set up with General Accounting Office.

- Identified and managed positions that are not currently funded but are still active.
- Implemented new supervisor training courses into on-boarding of new employees
- Created a process for internal employees to complete the supervisor academy.
- Administered the SECC program for the AGO.
- Managed the annual Think Pink survey.
- Process new appointments for the Arizona Civil Rights Advisory Board and approximately 5 applications for the Civil Rights Mediator program.
- Successfully processed and on-boarded 256 new hires, transfers and promotions.
- Successfully processed and on-boarded 155 temporary employees and unpaid interns/volunteers.
- Provided classroom supervisor training and phone support on how to utilize the new MAP system within the AGO. Trained 127 supervisors in Phoenix and Tucson. Average Overall Customer Satisfaction Score: 7.3 on a scale of 8 being Very Satisfied.
- Partnered with the Finance group to compare AGO salaries with surrounding city and county salaries in the same classification.
- Managed, coordinated and successfully implemented Personnel Reform initiatives including policies and procedures updates, retention payments, employee communications, report tracking, performance management preparation and transition and position updates.

## 2012

- The evaluation process was updated and published on office intranet (linkAG).
- Successfully managed and facilitated the annual Employee Recognition Awards.
- Effectively implemented Division re-organizations.
- Administered and managed a Summer Law Clerk Program for more than 44 law students.
- Identified Return Retirees for PSPRS and ASRS Alternate Contribution Rate (ACR) and completed set up with General Accounting Office.
- Began planning process for implementation of Personnel Reform and communicating the changes to our employees. Partnering with ADOA to strategically roll out and manage the initiatives that will impact our agency.
- Providing Health & Wellness Events to the agency including email blasts, intranet updates and wellness courses, screenings and clinics (Nutrition Management Courses, Flu Shot, Prostate Onsite Project, Mobile Onsite Mammography, Blood Drives).
- The New Employee Orientation available to new employees on their very own linkAG page.
- Formalized process and tracking system for the redaction process.
- Worked with ADOA on the new Absence Management system.
- Assumed responsibilities for managing FMLA for all Child and Family Protection Division employees.
- Partnered with our payroll department to receive bi-weekly reports for purposes of monitoring FMLA leave, Sick leave, temporary status employee hours, Worker's Compensation and various other time card entries.

- Joined efforts with Facilities to renumber the law building maps and offices.
- Created volunteer attorney, intern job announcements to keep a pool of interested candidates.
- Coupled with ISS to implement New Employee Technology Training within the first two days of hire.
- United with ISS to add office addresses and office numbers to Outlook and to update the Division and Section for employees after the re-organization.
- Streamlined the FMLA process for all AGO employees from request of leave to return from leave.
- Teamed up with the Facilities group on the Security Badging process for improved customer service.
- Updated our file systems for better organization and accessibility.
- Worked with ISS to update the AGO external website employment page to boast jobs at the AGO and for the State of Arizona.
- Implemented an electronic policy routing system through our office intranet.
- Trained and assisted the Facilities group with the implementation of the Footprint tracking process for all centralized services.
- Processed bi-annual Return Retiree Benefit Premium Subsidy reimbursement requests.
- Worked with Facilities and ISS to effectively manage and organize the emergency relocation of AGO staff during the flood of the Law Building.
- Created a process to identify and manage positions that are not currently funded but are still active.
- Performed monthly audits on agency Organizational Charts.
- Centralized the AGO intern program for Undergraduate, Graduate and Law School Students including Interns, Externs and Fellows.
- Centralized the AGO volunteer program.
- Coordinated AGO's participation and representation in Colleges and Universities seasonal onsite job fair events in Phoenix and Tucson.
- Maintained general employment advertisements on: the State Bar of Arizona webpage, Arizona Attorney Magazine monthly publication, Arizona Prosecuting Attorney's Advisory Council (APAAC), Career sites for ASU, Phoenix School of Law and UA and Social media sites such as Twitter, LinkedIn & Facebook.
- Combined efforts with the Executive Office and Information Services Section to complete the Recruitment Video initiative.
- Designed and implemented the Attorney Recruitment Interview Structure.
- Implemented a new process to review Conflict of Interest forms by reviewing Legal Files and coordinating with the Solicitor General's Office.
- Processed and tracked all of the AGO's public information requests.
- Updated all AGO employees Personal Information Forms.
- Updated the process to manage agency Worker's Compensation Claims and successfully completed all OSHA reporting requirements.
- Administered the *State Employees Charitable Campaign* for the Office.
- Successfully processed and on-boarded 241 new hires, transfers and promotions.

- Successfully processed and on-boarded 166 temporary employees and unpaid interns/volunteers.

## 2011

- Expanded the Human Resources Section to manage the centralization of all Human Resource functions including Recruitment, New Hire On-boarding and Transition, Intern/Volunteer Programs, Professional Development, Personnel Actions, Employee Relations and Exit processes.
- Streamlined all HR processes for increased efficiency and customer satisfaction using electronic tools to enhance productivity and accessibility for our clients.
- Successfully managed and facilitated the annual Employee Recognition Awards.
- Effectively implemented three Division re-organizations.
- Created office-wide Organizational Charts to track all agency employees and positions.
- Assisted with the implementation of the new Employee Time Entry System.
- Put into operation the Footprints application to track all HR transactions and requests.
- Started providing customer service surveys to measure HR performance and client satisfaction.
- Created a comprehensive New Employee Orientation for all new employees, interns, volunteers and temporary staff.
- Developed and implemented an updated Office Policies and Procedures.
- Administered and managed a Summer Law Clerk Program for more than 40 law students.

## 2010

- Assisted the Divisions in implementing the 2010 legislative mandated 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 out-reach placement services for impacted employees and training support for supervisors to minimize the impact of the RIFs.
- Established and implemented diversity and cultural competency program initiatives across the Office including the creation of the *Accessibility and Accommodation Guidebook*, performing exit interviews that capture employee perceptions of inclusion and respect, and instituting welcoming environment practices.
- Executed a series of internal audits to ensure Office personnel practices were compliant with applicable Arizona Department of Administrative rules/procedures 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 the 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.
- Upon completion of an internal audit the Office Loss Prevention Program, HRS developed and implemented trainings in the areas of ADA, Ethics, Confidentiality and Conducting Performance Appraisals to ensure compliance with applicable state, federal and agency regulations.
- During the year, HRS reviewed over 10,000 resumes, recruited and hired 27 attorney and 47 non-attorney “mission critical” positions.
- Coordinated the Office Blood Drive Campaign. The Office received high recognition with a “Bronze Award” for 20% or more participation in blood drives conducted throughout the year, which made a life preserving difference to hundreds of patients throughout Valley hospitals.
- Oversight and implementation of 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.

### **Procurement Section:**

#### **2013**

- Administered the Request for Proposal for Outside Counsel for legal services on “as needed, if needed” basis to assist the Attorney General’s Office. This review resulted in a total of 100 law firms being selected in various areas of law to represent the Office.
- Procurement implemented ProcureAZ which has resulted in process changes and labor savings.
- Implemented a review and file process for ISAs and IGAs, which is catching irregularities and correcting them
- Implemented a process for ordering copy machine/printer for use at the agency to make a better use of resources.
- Implementing a furniture ordering process to better manage furniture purchases.
- Oversaw the process of awarding \$29 million in mortgage settlement program funds to assist distressed borrowers. Included 6 requests for proposals for various mortgage settlement programs awarded and 19 separate contracts.

#### **2012**

- Procurement has partially implemented ProcureAZ and is trying to strategically implement other aspects to aid the agency without creating extra work loads and inefficiencies.
- Implement a review and file process for ISAs and IGAs
- Continue to overhaul the copy machine/printer usage at the agency to make a better use of resources.
- Clarify the process of the expert witness agreements to identify the value of the agreements.

2011

- Administered the Request for Proposal for Outside Counsel for legal services to assist the Attorney General's Office, if needed. This review resulted in a total of 94 law firms being selected in various areas of law to represent the Office, if needed.
- Administered the Request for Proposal for security screening equipment to replace outdated equipment at the Office. This resulted in the purchase of two x-ray machines and two walk through metal detectors.



**TOM HORNE  
ATTORNEY GENERAL**

**OFFICE OF THE ARIZONA ATTORNEY GENERAL  
BUSINESS AND FINANCE DIVISION**

**VICKI SALAZAR  
DIVISION DIRECTOR**

## **FY2013 ANNUAL REPORT**

### **APPENDIX G**

#### **Division Mission:**

To support the Attorney General's Office and the State with a multidisciplinary team of financial information services. We provide strategic planning, budgeting, debt collection, accounting, grant processing, and financial control services with a commitment to continual process improvements; timely and accurate financial information, analysis and forecasting; and ensuring compliance with Federal and State laws and Agency guidelines and policies.

#### **Division Summary:**

The Business and Finance division is comprised of the Bankruptcy and Collection Enforcement Section (BCE), the Budget and Strategic Planning Section, the Grants Management Section and the Financial Services Section (FSS).

#### **Bankruptcy and Collection Enforcement Section (BCE)**

The Bankruptcy and Collection Enforcement Section (BCE), comprised of the Collection Enforcement Section and the State Court and Bankruptcy Section, is a cross-functional team of attorneys, legal staff and debt-collection professionals. BCE's mission is to collect debts owed to the State of Arizona, efficiently, expeditiously and fairly in order to maximize revenue.

BCE represents nearly all state agencies, boards, commissions and departments in bankruptcy, state court litigation and collection matters, and its responsibilities range from routine collection and bankruptcy matters to complex litigation to establish debt.

In FY2013, BCE's net collections on behalf of the State were \$15.6 million, which is a 10% increase over the previous fiscal year. Some significant collections included:

- \$811,000 on behalf of the Department of Transportation in the Mesa Air Group bankruptcy case,
- \$419,000 on behalf of the Department of Revenue in the Bashas' bankruptcy case,
- And \$315,000 on behalf of the Department of Revenue in the FX4, LLC; FX4A, LLC; and FX4B, LLC.

### **Budget and Strategic Planning Section**

Budget and Strategic Planning Section assists with planning and developing the Attorney General's Office (AGO) agency budget, strategic plan, Division & Section budgets, indirect cost proposals, monthly financial reports, cash flow statements and special reports as required. The Budget Section meets with the AGO's Division Chiefs and Section Chiefs to develop short and long-term fiscal strategies, provide guidance, make recommendations on related financial matters, and prepare budget allocations to ensure program needs are met and the financial resources of the agency are aligned with the mission and goals of the Attorney General's Office.

#### *Section Highlights:*

- Lobbied for and secured FY2014 funding for the following budget issues:
  - Capital Post-conviction Prosecution of \$500,000
  - One-time grants management software of \$239,400 for Victims' Services
  - Permanent appropriation increase of \$509,700 to the Victims' Rights Fund
  - Continuation of AHCCCS funding of \$1,200,000 for Tobacco Settlement Litigation Costs
  - Increase in the Department of Revenue ISA of \$200,000
  - Increase in General Fund appropriation of \$1,549,300 with a federal match increase of \$917,100 for the Protective Services Section
- Implemented Personnel Budget Variance Report by position, program and fund
- Increased use of data and information systems as a management tool to make better informed decisions



## **Grants Management Section**

The Grants Management Section provides centralized grants management services to the AGO. The Grants Management Section oversees all grant applications to ensure both program and fiscal compliance and reporting accountability for each grant in each AGO division.

### *Section Highlights:*

- The Grants Management Section has successfully maintained a “grant” working relationship with all divisions of the AGO following grant guidelines and procedures.
- During FY2013 the Grants Management Section worked closely with the Criminal Division to renew, maintain, and support 11 federal and state funded grants. Collectively, these grants support 51 FTEs and provide funding over \$6M.
- During FY2013 the Grants Management Section worked closely with Community Outreach to secure a new state grant funded from the Governor’s Office. This grant provides new funding of \$152,940, and supports .65 FTE. Grants Management also supported Community Outreach to renew annual grant funding of approximately \$50,000.

## **Financial Services Section (FSS)**

The Financial Services Section (FSS) is responsible for managing the financial functions of the Attorney General’s Office, ensuring fiscal compliance and accountability by division, section and unit. Financial resources are managed across twenty-three funding sources within ten divisions for a total agency budget of approximately \$100 million.

- General Ledger & Accounts Receivables: accounts for debts owed to the State of Arizona and the Office of the Attorney General. Generates invoices and statements for services rendered and debts owed. Deposits all monies collected by the office while maintaining adequate cash flows, internal controls and proper stewardship of the Office’s assets. Tracks fixed assets and maintains the statewide accounting system structure.
- Payroll: ensures that all employees are paid accurately and timely along with their leave accruals. Generates reports for Human Resources verification and monitors all variances against prior pay cycles.

Reconciles payroll system activity against the accounting system and performs leave accrual audits, adjustments and payouts as needed.

- Accounts Payable & Travel: tracks encumbrances, inbound invoices, employee reimbursement claims, travel claims, and restitution payments. Verifies and reconciles invoice and claims data, schedules payments, verifies expenditures against unnecessary or duplicate expenses, and issues appropriate checks while maximizing applicable discounts. Ensures proper remittance of Use Taxes.

#### *Section Highlights:*

- ProcureAZ: Implemented additional functionality which allowed for the acknowledgement of receipt of goods and payment of invoices through ProcureAZ. Program Areas are able to confirm receipt of goods in an automated manner in ProcureAZ, significantly reducing the amount of time required by both the Program Areas and Accounting to obtain a documented confirmation of receipt. In addition, the new functionality has also reduced the amount of keying and input errors when paying an invoice. In FY2013, 86% of eligible transactions were processed through ProcureAZ. These enhancements have enabled us to reduce delays in payment to vendors and to increase capacity of our people resources. Additionally, documentation is scanned and attached on-line, thereby reducing the amount of paper retained in Accounting.
- Infoview: Maximized the reporting functionality of Infoview. Infoview was designed to improve the availability of data to end users by providing them with self-service access. The benefits include: greater accessibility to analyze data without the involvement of Information Services Section (ISS), faster decision making, improved performance metrics, and greater accountability. By utilizing this tool, and in some instances with the help of the ISS, we have been able to extract large amounts of real-time data and format it in a way that provides meaningful insight that any user can understand. Some of the reports that have been automated with this software include: Accounts Receivable Aging, Fixed Assets Summary, JLBC Uncollectible Debt Audit Report, and the Payments Contract Tracking Report.
- Property Management Conversion: The property management area of the Financial Remedies Section (FRS) has in the past utilized the database capabilities of Microsoft Access. Business and Finance assisted FRS to migrate this data from Access to Legal Files to better link assets to cases, improve reporting functionality, and streamline processes. With the assistance of ISS and FRS we were able to create custom windows in Legal Files that better met FRS's business needs. This included the

ability to track assets, payments received, and distributions to law enforcement agencies. To date we have moved approximately 10,000 assets from the Access database into Legal Files.

- Case Accounting Unit: We are in the process of providing case accounting to sections throughout the office. Currently, we provide extensive case accounting for the Bankruptcy and Collections Enforcement Section which includes posting payments into proper cases, depositing checks into correct PCAs, maintaining case balances, and reporting. We are in the process of expanding these services to other sections which will include business process reengineering, payment application, case balance tracking, and reporting.
- Payroll Bi-Weekly Reports to ASD: The Payroll Unit started generating Bi-Weekly Reports for the Administration Services Division (ASD). These reports provide ASD with valuable insight into payroll and provide an additional check and balance. Some reports being generated include: Compensatory Leave Balances, Leave without Pay, Sick Leave in Excess of 24 Hours, FLMA Utilization, and Partial Day Absences. Initially, Payroll provided roughly 10 different reports -- by the end of FY2013 Payroll was providing 16 different reports to ASD on a bi-weekly basis.
- Deposit Process: The process in which Accounting deposits incoming checks was automated through the use of CashPro Online. This service, provided through Bank of America, provides for a web-based activity that quickly, conveniently, and securely deposits payments to our bank account. The checks are fed into a digital check scanner, a deposit detail report is generated, and the physical checks are retained in Accounting for 30 days then destroyed. The report contains all pertinent information from the checks and provides confirmation of deposit. This process eliminated the necessity of completing a deposit ticket and sending the physical checks to the Treasury daily. It has reduced the time it takes for the deposit to post to our account, and eliminated the possibility of a misdirected or delayed deposit.



**OFFICE OF THE ARIZONA ATTORNEY GENERAL  
COMMUNITY OUTREACH AND EDUCATION DIVISION**

**TOM HORNE  
ATTORNEY GENERAL**

**KATHLEEN WINN  
DIRECTOR OF COMMUNITY  
OUTREACH**

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**APPENDIX H**

**COED Overview 2013**

Community Outreach and Education participated in over 650 community events and presentations this year throughout the state. These community events are made up a combination of information booths as well as informational presentations on topics including: internet safety, anti-bullying, identity theft, consumer scams, life care planning issues, civil rights, senior abuse, and victim's rights. Through these events and presentations Community Outreach has spoken to more than 50,000 Arizona citizens about the topics listed. Additionally, Community Outreach made contact with, and addressed the issues of nearly 3,000 constituents who reached out to our office with questions or concerns this year.

**Grant Funded Programs**

**Governor's Office of Child, Youth and Family**

At the end of this fiscal year, the Governor's Office for Children, Youth and Families awarded the Arizona Attorney General's Community Outreach and Education Division a grant to implement a statewide drug education and prevention program for parents called *Guiding Good Choices* over the next year. In collaboration with the Arizona Department of Health Services and the Department of Behavioral Health Services working jointly to improve parenting skills, create awareness and help to prevent prescription drug, illegal drug, and alcohol abuse in Arizona families.

**Department of Justice/ Maryland Crime Victim Resource Center**

After its launch in late January 2012 the Arizona Identity Theft Coalition has increased its ranks and created identity theft awareness materials and developed new tools for law enforcement. Also, as part of the awareness campaign the Coalition produced 14 public service announcements for use in radio markets across the state. The focus of

the ads was to make listeners aware of the wide range of problems and solutions associated with identity theft and the resources available from the Coalition and the Arizona Attorney General. Over 58,400 statewide unique listeners heard the Public Service Announcements. The Attorney General's Office successfully guided over 50 victims on how to restore their credit.

### Internet Crimes Against Children

This year Community Outreach with the aid of the Internet Crimes Against Children taskforce distributed 25,000 pieces of our newly drafted Internet Safety For Children/Parents publications. These publications are a great resource for families and are given out to students and parents during the internet safety presentations. In the past year Community Outreach has reached approximately 36,000 parents, students and educators in the state.

### Internal Initiatives

In August of 2012 the Arizona Attorney General's Community Outreach Division launched its first Anti-Bullying initiative. An Anti-Bullying presentation targeted 4<sup>th</sup> – 8<sup>th</sup> graders across the state. This program seeks to break down all aspects of bullying, identify the roles that kids are playing and give them the tools on how to make a change for themselves and their schools. After starting this program in August, the Casa Grande school district asked the Attorney General's office Community Outreach division to be a part of their first annual Anti-Bullying summit. The summit brought together student leaders from different schools in the district to help teach them ways to stop bullying within their communities.

The Arizona Military Outreach (CAMO) program continues to find new effective and innovative ways of helping our National Guard, Active duty and Veteran community here in Arizona. Community Outreach and Education in conjunction with CAMO was instrumental in developing a one of a kind training for first responders and how to approach and interact with veterans and military service members experiencing PTSD, depression or effects of traumatic brain injuries. Over 5,000 first responders, law enforcement officers and court personnel have been trained. CAMO has begun work on developing a series of document destruction events across the state for armed service members as well as recruiting offices which accumulate massive amounts of personal data on recruits.

Outreach efforts for the Task force Against Senior Abuse (TASA) have seen dramatic change and success over the past year. This year four key groups were targeted for engagement and training by Community Outreach; large medical provider staff, home healthcare provider organizations, large private industry groups, and medical doctors that deal with this population. Each of the groups has significant interaction with the senior population. Those receiving training were educated on common types of senior abuse, either physical or financial.

## **INDEX**

### **A**

Accounts Payable and Travel – Appendix H  
Administrative Litigation and Civil Cases by Program – Appendix E  
Administrative Services Division – Appendix F  
AG Opinions – Appendix A  
AGO Library and Research Services – Appendix A  
Agency Counsel Section - Appendix C  
Agriculture, Department of – Appendix C  
Alliance Section – Appendix B  
Antitrust Unit – Appendix C  
Appellate Matters (Child Support Enforcement Section) - Appendix E  
Appellate Matters (Civil and Criminal Litigation and Advice) – Appendix D  
Appellate Practice (Solicitor General’s Office) – Appendix A  
Arizona Appellate Court Practice (Solicitor General’s Office) – Appendix A  
Attorney General Opinions – Appendix A  
Auto Repair Cases and Enforcement – Appendix C

### **B**

Bank of America Settlement – Appendix C  
Bankruptcy and Collection Enforcement Section – Appendix G  
Border Crimes Enforcement Section – Appendix B  
Budget Section – Appendix G  
Budget and Strategic Planning Section – Appendix G  
Business and Finance Division – Appendix G  
Business Opportunity Fraud – Appendix C

### **C**

Campaign Finance Enforcement – Appendix A  
Child and Family Protection Division – Appendix E  
Child Support Enforcement Section – Appendix E  
Civil and Criminal Litigation and Advice – Appendix E  
Civil Division – Appendix D  
Civil Penalties/Fines (Civil Division) – Appendix D  
Civil Rights Compliance and Civil Rights Litigation Sections – Appendix C  
CLA Appellate Matters – Appendix E  
Clean Election Act – Appendix A  
CLE Presentations – Appendix A  
Come to Court Events – Appendix E  
Community Outreach and Education Office – Appendix H  
Complaints/Inquiries Statistics (Consumer Information and Complaints Unit) – Appendix C  
Continuing Legal Education – Appendix A  
Consumer Information and Complaints Unit – Appendix C  
Consumer Litigation Unit – Appendix C  
Consumer Protection and Advocacy Section – Appendix C  
Criminal Appeals/Capital Litigation Division – Appendix A  
Criminal Appeals/Capital Litigation Division Subprogram Summary – Appendix A  
Criminal Appeals Section – Appendix A  
Criminal Division – Appendix B

## D

Defending Arizona Statutes (Solicitor General's Office) – Appendix A  
Dollars Generated or Saved (Civil Division) – Appendix D  
Drug & Racketeering Enforcement Section – Appendix B

## E

E-Books Litigation – Appendix C  
E-cigarette – Appendix C  
Education and Health Section – Appendix D  
Employment Law Section – Appendix D  
Enforcement of the Escrow and Directory Statutes – Appendix C  
Ensuring Fair Elections and Informed Public – Appendix A  
Ensuring Schools Comply with Public Finance Laws – Appendix C  
Environmental Enforcement Section – Appendix C  
Ethics – Appendix A

## F

Facilities Management and Planning Section – Appendix F  
Financial Institutions (Dept. of) – Appendix G  
Financial Remedies Section – Appendix B  
Financial Services Section – Appendix G  
Fraud and Special Prosecutions Section – Appendix B

## G

Game and Fish Commission – Appendix C  
Garnishment Collection Summary – Appendix E  
General Consumer Fraud Matters – Appendix C  
General Ledger and Accounts Receivable – Appendix H  
Governor's Office of Child, Youth and Family – Appendix H  
Grant Funded Programs – Appendix H  
Grants Management Section – Appendix G

## H

Health Care Fraud & Abuse Section – Appendix B  
Human Resources Section – Appendix B

## I

Identification at the Polls and Proof of Citizenship – Appendix A  
Independent Advice (Solicitor General's Office) – Appendix A  
Initiative Challenges – Appendix A  
Insurance (Dept. of) – Appendix C  
Internet Tobacco Sales Prohibition – Appendix C  
Internal Initiatives (Community Outreach and Education Office) – Appendix H

## L

Liability Management Section – Appendix D  
Licensing Enforcement Section – Appendix D  
Lobbying Enforcement – Appendix A

## M

Maryland Crime Victim Resource Center – Appendix H  
Monies Recovered – Appendix C  
Mortgage Fraud and Loan Modification Scam Protection – Appendix C  
Multi-year Settlement of MSA Payment Disputes – Appendix C

## N

National Attorneys General Training and Research Institute (NAGTRI) – Appendix A  
National Mortgage Settlement – Appendix C  
Natural Resources Section – Appendix D  
Ninth Circuit Court of Appeals Practice – Appendix A  
Nominating Petitions Litigation – Appendix A  
Non-Compliant Tobacco Manufacturers Shutdown – Appendix A

## O

Open Meeting Law Enforcement Team (OMLET) – Appendix A  
Organizational Development (Human Resources Section) – Appendix F  
Outreach Activities (Civil Rights Compliance and Civil Rights Litigation Sections) – Appendix A

## P

Pharmaceutical Matters – Appendix C  
Policy and Training (Child Support Enforcement Section) – Appendix E  
Policy and Training (Protective Services Section) – Appendix E  
Preclearance Under the voting Rights Act – Appendix A  
Privacy Matters – Appendix C  
Procurement – Appendix F  
Protecting Consumers from Mortgage Fraud – Appendix C  
Protective Services Section – Appendix E  
PSS Appellate Matters (Protective Services Section) – Appendix E  
Public Advocacy and Civil Rights Division – Appendix C

## R

Real Estate (Dept. of) – Appendix C  
Redistricting Litigation – Appendix A  
Risk Management Representation – Appendix D

## S

Service Award – Leadership – Appendix B  
Solicitor General's Office – Appendix A  
Southwest Border Alliance Section – Appendix B  
Special Investigations Section – Appendix B

## T

Task Force Against Senior Abuse – Appendix C  
Tax Section – Appendix D  
Telemarketing Scams and Do Not Call Violations – Appendix C  
Tobacco Enforcement Unit – Appendix C  
Transportation Section – Appendix D  
Travel – Appendix G  
Trial Practice - (Child Support Enforcement Section) – Appendix E



Trial Practice - (Protective Services Section) – Appendix E  
Tucson Criminal Section – Appendix B

U.S. Supreme Court Practice – Appendix A

U

Veterans Outreach – Appendix E  
Victim Services (Office of) – Appendix B

V