



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

### **ANNUAL REPORT FY 2014**

#### **Executive Summary**

*Editors Note: The following is a summary of the FY 2014 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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Efforts continued throughout Fiscal Year 2014 in the battle against drug cartels and criminal activity, fraud and scams against the State and consumers, and the Federal Government to protect the rights of Arizona citizens.

Horne continued his efforts to protect the sanctity of the voter registration process. In March he announced a significant victory on behalf of the voters in which the court ordered the Election Assistance Commission to help Arizona and Kansas enforce their voter identification laws.

*"I personally argued this case, before the United States Supreme Court. The language of that Supreme Court case dictated today's result in the District Court. The victory was really won at the level of the United States Supreme Court. There's been a media cover-up of the seriousness of voter fraud in Arizona. In an earlier trial, a Federal District Judge in Arizona found that voter fraud is a serious problem in Arizona."*

*Horne continued: "Today's decision is an important victory for the people of Arizona against the Obama Administration, assuring that only Arizona residents and not illegals, vote in Arizona elections."*

Fiscal Year 2014 also brought the introduction of legislation to crack down on the epidemic of human sex trafficking.

*“Human trafficking is a modern-day form of slavery and this issue continues to be a high priority for my Office,” said Attorney General Tom Horne. “Over the past two legislative sessions we have aggressively pushed legislation to toughen penalties on this illicit practice and this year will be no different. I’ll continue my fight to protect the young people who fall victim to these kinds of predators.”*

Attorney General Horne continues to place emphasis on the important work the Capital Litigation Section does. By securing a special appropriation from the Arizona Legislature to augment personnel, the Capital Litigation Section continues to litigate state post-conviction cases arising in Maricopa County. This section also successfully litigated in state and federal courts the constitutionality of Arizona’s lethal injection protocol.

*A complete review of the work of the Solicitor General, including: Criminal Appeals Section, Capital Litigation Section, Civil Appeals, and Elections Section will be found in **Appendix A**.*

The Criminal Division continued its efforts in combatting dangerous drug cartels and other criminal enterprises.

The Border Crimes Enforcement Section reported the prosecution of 489 active, on-going cases and 360 new defendants. Drug seizures removed approximately 15,973 pounds of marijuana, 42 pounds of methamphetamine, and 31 pounds of cocaine off the streets of Arizona.

Wire interception investigations through the Drug & Racketeering Enforcement Section resulted in 28 indictments and 107 defendants. They also obtained \$2,475,214 in court ordered fines and \$105,717 in restitution.

*All sections within the Criminal Division have been extremely active in working with local and federal authorities to combat criminal activity within the State. Learn more about the efforts of the Criminal Division including: Alliance Section, Border Crimes Enforcement Section, Drug & Racketeering Enforcement Section, Financial Remedies Section, Fraud & Special Prosecutions Section, Health Care Fraud & Abuse Section, Office of Victim Services, and Special Investigations Section in **Appendix B**.*

Enforcing the National Mortgage Settlement continued to be a high priority for the Office, bringing in \$2 billion in relief to consumers. In addition to securing consumer relief, the Arizona Attorney General’s Office developed the “Help You Can Trust” mortgage assistance programs to assist those struggling with the financial crisis. These programs served nearly 15,000 Arizonans. In addition to enforcing the National Mortgage Settlement, the Consumer Litigation Unit continues to protect consumers from mortgage fraud and loan modification scams.

Consumer Litigation was busy in fiscal year 2014 filing enforcement actions designed to crack down on scams including telemarketing scams, consumer fraud, and health care and pharmaceutical cases.

*Learn more about what Consumer Protection and Advocacy does to protect the public against fraud and abuse. Updates from the Consumer Litigation Unit, the Consumer Information and Complaints Unit, the Agency Unit, the Tobacco Enforcement Unit, the Antitrust Unit, the Environmental Enforcement Section, and the Agency Counsel Section can be found in **Appendix C**.*

Immediately upon taking office, Horne made dealing with the injustices happening in Colorado City a priority. On March 20, 2014, in the case of *Cooke (State) v. Town of Colorado City, et al.*, the jury returned a unanimous verdict in favor of the State of Arizona on all fair housing claims presented at trial. The verdict awarded \$5.2 million in damages. The requested injunctive and affirmative relief would also put an end to the pattern of religious discrimination in the defendants' housing-related services.

*Read more about civil rights cases in **Appendix C**.*

The Civil Division consists of Education and Health, Employment Law, Liability Management, Licensing and Enforcement, Natural Resources, Tax, Transportation, and has Senior Litigation Counsel. The sections handle a diverse variety of legal matters from complex litigation and legal representation to civil and appellate issues.

A few of the issues handled by the division include:

- Successfully defending the award of the largest mental health contract ever issued in Arizona
- Abortion Cases
- Mental Health Cases
- Medical Marijuana Cases
- Ethnic Studies
- Employment Law Cases

*A more complete review of the work of the Civil Division, including case details, is found in **Appendix D**.*

The protection and welfare of Arizona's children continues to be a top priority for Attorney General Horne. FY2014 brought major changes to Arizona's system of protecting our children. The Division of Children, Youth, and Families was separated from the Department of Economic

Security and the Department of Child Safety (DCS) was established. DCS was established to focus exclusively on child safety. The Protective Services Section (PSS) of the Attorney General's Office provides comprehensive legal representation to DCS and provided extensive legal preparation for the client's reorganization. In addition to assisting with the major reorganization, PSS attorneys also prepared for and/or attended 82,789 court appearances and represented DCS in trial a total of 6,656 days.

*Learn more about the efforts of the Child and Family Protection Division, including the Protective Services Section, Child Support Services Section, Civil and Criminal Litigation and Advice Section, and the Appellate Practice Group **Appendix E**.*

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

*Learn more about the operations and cost saving efforts of the Administrative Services Division, including: Human Resources, Procurement, and Facilities Management in **Appendix F**.*

The Business and Finance Division has been an integral part of the successes had by the Attorney General's Office. The division provides strategic planning, budgeting, debt collection, accounting, grant processing, and financial control services.

In FY2014 the Bankruptcy and Collection Enforcement Section's net collections on behalf of the State were \$18.8 million, an increase of 20% over last year. This was made possible by the efforts of the Budget and Strategic Planning Section by lobbying and securing 11 FTE positions for debt collection expenditures, in addition to securing funding for other budget issues.

*A complete review of the work of the Business and Finance Division including: Bankruptcy and Collection Enforcement, Budget and Strategic Planning, Grants Management, Travel, and Financial Services can be found in **Appendix G**.*

Also hard at work has been our Community Outreach and Education Division, participating in over 500 community events, reaching over 77,000 Arizonans.

One of the Home's priorities has been the creation of the Task Force Against Senior Abuse (TASA) to combat elder abuse. Partnering with outside groups such as the Governor's Council on Aging and Legislative Council, Area Agency on Aging, Statewide Elder Abuse Coalition, Western Agency Council of Governments, and Northern Agency Council of Governments, TASA has provided training and services to target the different types of senior abuse.

*A complete listing of the programs and efforts of the Community Outreach Division can be found in **Appendix H**.*

# **APPENDIX LISTING FY 2014 ANNUAL REPORT**

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

*Mission Statement, Major Responsibilities*

*CRIMINAL APPEALS SECTION & CAPITAL SECTION YEAR IN REVIEW: Overview of Accomplishments, Section Highlights, Major Accomplishments Criminal Appeals, Major Accomplishments Capital Litigation Section, Cases Affirmed by the Ninth Circuit Court of Appeals, Cases Affirmed on Direct Appeal by the Arizona Supreme Court,*

*CIVIL APPEALS & ELECTIONS SECTION YEAR IN REVIEW: 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 an Informed Public, 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, Other Election Matters, Significant Achievements, Appellate Practice, Attorney General Opinions, AGO Library and Research Services (LRS), Ethics, Continuing Legal Education, NAGTRI Coordination and In-House Training, OMLET, Independent Advice*

*CLE PRESENTATIONS*

## **APPENDIX B: CRIMINAL DIVISION**

*CRIMINAL DIVISION: Mission, Budget, Division Summary*

*ALLIANCE SECTION: Overview, TRAC*

*BORDER CRIMES ENFORCEMENT SECTION (BCS): Overview of Accomplishments, Major Cases*

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

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

*FRAUD & SPECIAL PROSECUTION'S SECTION (FSP): Overview of Accomplishments, Major Cases*

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

*OFFICE OF VICTIM SERVICES (OVS): Mission, Overview of Accomplishments, Major Cases, 2014 Distinguished Service Awards*

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

## **APPENDIX C: PUBLIC ADVOCACY & CIVIL RIGHTS SECTION**

*CONSUMER PROTECTION & ADVOCACY SECTION: Overview, Accomplishments, Consumer Litigation Unit, Enforcing the National Mortgage Settlement, "Help You Can Trust" Mortgage Assistance Programs, Continuing Enforcement Actions Against Mortgage Loan Officers, Protecting Consumers from Mortgage Fraud and Loan Modification Scams, Telemarketing and Business Opportunity Fraud, Auto Cases – Undercover Operations and Enforcement Actions, Health Care Fraud and Pharmaceutical Cases, General Consumer Fraud Matters,*

*TASK FORCE AGAINST SENIOR ABUSE: Overview, Statistics*

*CONSUMER INFORMATION AND COMPLAINTS UNIT: Overview, Statistics*

*AGENCY UNIT: Overview, 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: Successfully Protecting Arizona's Share of Master Settlement Agreement Payments, Multi-year Settlement of MSA Payment Disputes, Enforcement of the Escrow and Directory Statutes, Investigation of Unlawful Internet Sales of Tobacco Products, Implementation of House Bill 2674, Youth Tobacco Program, Electronic Cigarettes and Other Tobacco-Related Health Activities*

*ANTITRUST UNIT: Overview, US Airways/American Airlines Merger, Dynamic Random Access Memory (DRAM) Antitrust Litigation, Ensuring Schools Comply with Public Finance Laws*  
*CONSUMER EDUCATION AND OUTREACH: Overview*  
*CIVIL RIGHTS COMPLIANCE AND CIVIL RIGHTS LITIGATION SECTIONS: Overview, Accomplishments, Major Cases, Civil Rights Outreach Activities*  
*ENVIRONMENTAL ENFORCEMENT SECTION: Overview, Accomplishments, EES Impact Information*  
*AGENCY COUNSEL SECTION: Overview, Accomplishments*

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

*CIVIL DIVISION: Mission, Division Summary, Senior Litigation Counsel, Major Case Highlights*  
*HEALTH UNIT: Major Accomplishments, Abortion Cases, Certificate of Necessity Cases, Sexually Violent Person (SVP) Cases, Mental Health Cases, Medical Marijuana Cases, Other Significant ADHS Programs, Civil Money Penalties, Other Health Unit Accomplishments*  
*EDUCATION UNIT: Overview, Major Accomplishments, Administrative Action: In the matter of New Destiny Leadership Charter School - Major Accomplishments, Dollars Generated or Saved, General Accomplishments – Arizona Department of Education, Arizona Department of Education Audits, Arizona State Board of Education, Professional Practices Advisory Committee (PPAC), Arizona State Schools for the Deaf and Blind (ASDB), Arizona State Board for Charter Schools (Charter Board), Commission for Postsecondary Education (ASPE), School Facilities Board (SFB), Attorney General Opinions, Open Meeting Law Enforcement Team*  
*EMPLOYMENT LAW SECTION (ELS): Overview, Major Case Highlights – ELS Advice and Hearing Unit, Current Litigation Highlights*  
*LICENSING ENFORCEMENT SECTION (LES): Overview, Major Case Highlights, Major Accomplishments, Civil Assessments and Penalties, Cost Reimbursements, Other Savings to State Agencies*  
*LIABILITY MANAGEMENT SECTION (LMS): Overview, Major Case Highlights, Major Accomplishments, Dollars Saved*  
*NATURAL RESOURCES SECTION (NRS): Overview, Major Accomplishments, Significant Matters, Major Case Highlights, Monies Saved or Generated*  
*TAX SECTION (TAX): Overview, Major Accomplishments, Money Generated on Behalf of the Arizona Department of Transportation, Money Generated on Behalf of the Arizona Department of Revenue*  
*TRANSPORTATION SECTION (TRN): Overview, Major Case Highlights, Other Significant Matters, Cost Savings to the State, Civil Assessments and Penalties*

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

*Mission, Division Summary*  
*PROTECTIVE SERVICES SECTION: Overview, Trial Practice, Policy & Training, PSS Appeals, Accomplishment, Substantive Changes, FY2014 PSS Attorneys and Staff Statewide Statistics*  
*CHILD SUPPORT SERVICES SECTION: Overview, Trial Practice, Policy and Training, CSS Appellate Matters, FY2014 Statistics, Substantive Practice Change, Accomplishments, Veterans Outreach, Come to Court Events, Data Sharing Agreements*  
*CIVIL AND CRIMINAL LITIGATION AND ADVICE: Overview, CLA Appellate Matters, FY2014 CLA Civil Practice Team, Statistics, Civil Collections by Program, Garnishment Collection Summary, FY2014 Criminal Practice Team, Criminal Cases*

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

*History, Division Mission, Division Summary*  
*FACILITIES MANAGEMENT AND PLANNING SECTION: Daily Operations, Safety and Security, Central Services, Continuation of Operations Planning (COOP)*  
*HUMAN RESOURCES SECTION: Overview, Strategic Workforce Planning, Skilled Consultation, Organizational Development, Loss Prevention Program Oversight*

*PROCUREMENT SECTION: Overview*

*RESPONSIBILITIES AND ACCOMPLISHMENTS: Facilities Management and Planning Section - Major Accomplishments, Human Resources Section – Centralized Services, Annual Projects, Major Accomplishments, Procurement Section – Centralized Services, Recurring Projects, Major Accomplishments*

*COMMUNICATIONS: Chart*

*COST SAVINGS: Facilities Management and Planning Section, Human Resources Section, Procurement Section*

*PRODUCTIVITY STATISTICS: Facilities Management and Planning Section, Human Resources, Procurement*

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

*Division Mission, Division Summary*

*BANRUPTCY AND COLLECTION ENFORCEMENT SECTION (BCE): Overview*

*BUDGET AND STRATEGIC PLANNING SECTION: Overview, Section Highlights*

*GRANTS MANAGEMENT: Overview, Section Highlights*

*TRAVEL UNIT: Overview*

*FINANCIAL SERVICES SECTION (FSS): Overview, Section Highlights*

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

*COED OVERVIEW 2014*

*GRANT FUNDED PROGRAMS: Governor’s Office of Child Youth and Family, Internet Crimes Against Children*

*INTERNAL INITIATIVES: Human Trafficking, TASA, Anti-Bullying*



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ATTORNEY GENERAL

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

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**FY2014 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 appellate litigation;
- Managing the State of Arizona's criminal 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 enforcing civil election and campaign finance laws;
- 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. AGO Criminal Appeals Section & Capital Litigation Section Year in Review.**

**Overview of Accomplishments.**

In Fiscal Year 2014, the Criminal Appeals Section and Capital Litigation Section worked to uphold the convictions and sentences of criminal defendants in Arizona. The Sections filed 996 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.



## **Section Highlights.**

- The Criminal Appeals Section consists of 24 attorneys.
- The Capital Litigation Section consists of 16 attorneys.
- Support Staff for both sections: 17

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, the Ninth Circuit Court of Appeals, and the United States Supreme Court 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**

After having replaced seven attorneys who left the section in Fiscal Year 2013, it has been a year of relative stability, with only one attorney leaving in Fiscal Year 2014. The attorneys who have replaced the departing attorneys have gained valuable experience and are increasing their productivity. While the work load remains heavy, it is manageable given the stability and increased productivity.

An important accomplishment this year was enacting legislation to avoid a significant constitutional issue regarding juvenile offenders sentenced to life imprisonment. As a result of two recent United States Supreme Court decisions, we needed a mechanism for juveniles sentenced to life imprisonment with no possibility of parole for 25 or 35 years to be statutorily “eligible,” for parole. With the assistance of the legislative affairs staff, we were able to expedite the legislation very late in the session. As a result, we remedied the issue and saved our office, as well as County Attorneys’ Offices throughout the State, a considerable amount of time and anxiety having to litigate the issue in current and future cases.

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

In *State v. Serna*, 232 Ariz. 515, 307 P.3d 82 (App. 2013), a majority of a three-judge panel of the Arizona Court of Appeals held that when, during a consensual encounter, a law enforcement officer develops reason to believe the person he is engaged with may be armed and dangerous, the officer may conduct a pat-down for purposes of officer safety. There is a nationwide split of authority on this issue, with some courts requiring that the officer have some reason to detain the person before he may conduct a weapons pat down during a consensual encounter. The issue is of the utmost importance to law enforcement officers. In April, the Arizona Supreme Court granted review in this case and it was argued before the supreme court on June 3, 2014.

In *State v. Salazar-Mercado*, 687 Ariz. Adv. Rep. 9 (May 29, 2014), the Arizona Supreme Court held that the recently amended rules of evidence does not bar the State from presenting expert testimony regarding child sexual abuse accommodation syndrome (CSAAS) to help educate jurors regarding behavioral characteristics of sexually abused children. This was an important decision for prosecutors prosecuting child sexual abuse cases.

In *State v. Duran*, 233 Ariz. 310, 312 P.3d 104 (2013), the Arizona Supreme Court held that a defendant may not challenge on appeal a trial court’s ruling permitting the defendant to be impeached with statements made during an aborted change of plea colloquy unless the defendant actually testifies at trial. In this case, the trial court made a clear legal error in ruling that the defendant could be impeached but, by failing to testify at trial, defendant was barred from challenging the ruling on appeal. The supreme court reaffirmed and applied the “bright-line rule” recognizing that it “might adversely affect some defendants who decide not to testify based solely on a trial court’s erroneous ruling.”

In *State v. Lucas*, 234 Ariz. 263, 321 P.3d 428 (App. 2014), the Arizona Court of Appeals held that a defendant may not compel an interview of a minor victim's parent or legal guardian under legislation passed pursuant to victims' bill of rights', even after the victim has turned 18 and is no longer a "minor." The court disagreed with a case decided by another panel of the court of appeals that held that the parent or legal guardian's right to refuse an interview ceased when the victim turned 18 years of age.

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

It has been a challenging year for the Capital Litigation Section. The workload is extremely heavy and we are still 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 118 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. This appropriation has enabled the section to continue litigating state post-conviction cases arising in Maricopa County.

#### **Executions**

*Edward H. Schad*

Execution Date: October 9, 2013

Date of Crime: August 1, 1978

#### **Crime Summary:**

On August 1, 1978, Lorimar Groves, a 74-year-old Bisbee resident, left Bisbee in a new Cadillac on a trip to Everett, Washington, to visit his sister. On August 9, 1978, Groves' badly decomposed body was discovered hidden in the brush just off U.S. Highway 89 south of Prescott. Mr. Groves had been strangled with a rope that was still knotted around his neck. A month later, Schad was stopped for speeding in New York. Schad was driving Mr. Groves' Cadillac, and many of Mr. Groves' personal belongings were in the car.

*Robert G. Jones*

Execution Date: October 23, 2013

Date of Crime: May 30, 1996 and June 13, 1996

#### **Crime Summary:**

On May 30, 1996, Robert Jones and Scott Nordstrom entered the Moon Smoke Shop in Tucson. Jones immediately shot a customer in the head; one employee escaped, two others were shot at by Jones behind the counter (one was injured but survived and the other was not hit), and

another employee was executed by Scott Nordstrom with two shots to the head. Money was taken which was shared with lookout David Nordstrom. On June 13, 1996, Robert Jones and Scott Nordstrom entered the Firefighters Union Hall in Tucson. Three customers were executed with shots to the head by Jones and a wallet taken from one of them. The bartender was shot dead by Scott Nordstrom after being unable to open a safe; money was taken from a cash register. Both cases were solved when David Nordstrom contacted the police.

### **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.

#### *Murray (Robert) v. Schriro*

Robert and Roger Murray were sentenced to death for the murders of Dean Morrison and Jackie Appelhans. In May of 1991, the Murray brothers entered the home of the victims armed with shotguns, rifles, and handguns. They shot each victim at least three times and ransacked the home before they fled. This case was tried before dual juries, which ultimately convicted both Robert and Roger in June of 1992. The trial court subsequently sentenced both defendants to death.

In his appeal to the 9th Circuit, Robert Murray claimed that the trial court's denial of his *Batson* challenge was based on an unreasonable determination of the facts. In addition, Robert alleged that the state court's denial of his ineffective assistance of counsel claim regarding the presentation of his troubled childhood and impairments was an unreasonable application of clearly established federal law. The 9th Circuit panel rejected all of Robert's claims and affirmed the district court's denial of habeas relief. Robert passed away in prison in June from cancer.

#### *Murray (Roger) v. Schriro*

Roger Murray also raised several issues in his 9th Circuit appeal. Among them, he alleged that the trial court's denial of his change of venue motion was contrary to or an unreasonable application of Supreme Court precedent. In addition, Roger contended that the trial court's denial of his request for jury instructions on voluntary intoxication and second degree murder was also inconsistent with established federal law. Roger also claimed that the trial court erroneously applied a casual nexus test in weighing the aggravating and mitigating factors. In rejecting Roger's claims, the 9th Circuit panel held that the trial court's rulings were not based on unreasonable application of facts nor contradictory to clearly established federal law. The panel also held that the trial court properly applied the causal nexus test in weighing the aggravating and mitigating evidence before imposing sentence. The panel further held that Roger did not suffer any prejudice as a result. Section Chief Counsel Jeff Zick argued both cases.

In addition, the following cases were also affirmed by the Ninth Circuit during fiscal year 2014:

#### *Schurz v. Schriro*

*McKinney v. Ryan*  
*Gulbrandson v. Ryan*  
*Poyson v. Ryan*  
*Hedlund v. Ryan*

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

The Arizona Supreme Court affirmed eight capital cases during fiscal year 2014.

#### *State v. William Miller*

William Craig Miller was convicted and sentenced to death for five murders. The police found the five victims, which included young children, shot to death on February 21, 2006. Prior to the murders, Miller's Scottsdale home burned down. Two of the murder victims had recently begun cooperating with law enforcement on an arson investigation which ultimately led to Miller's indictment for arson and fraud. Miller had attempted to hire four different men to kill those who had cooperated with law enforcement. After staging a burglary at his rental home, police subsequently recovered several items, including bullets, which linked Miller to the five murders.

On direct appeal, Miller alleged, among other claims, that he was deprived of his right to a speedy trial and that the murder and solicitation charges were not properly joined under the Arizona Rules of Criminal Procedure 13.3(a) and (c). AAG Jeffrey Sparks did an outstanding job briefing and arguing this case. The Arizona Supreme Court affirmed the convictions and sentences, finding no Sixth Amendment violation of Miller's speedy trial rights. The court also found that the trial court did not abuse its discretion by consolidating the charges.

#### *State v. Shawna Forde*

In May of 2009, Shawna Forde and two other accomplices shot and killed Raul Flores and his 9-year-old daughter Brisenia during a home invasion in Arivaca, a desert community about ten miles north of Mexico. Forde and her accomplices believed Raul had drug proceeds in his home and the group intended to rob these proceeds and use them to fund a paramilitary organization to protect the border.

Forde pursued several claims in her direct appeal. Among them, she alleged prosecutorial misconduct based on the cross-examination of a memory and perception expert. Forde also alleged her due process rights were violated when the court failed to define "felony" and "theft" within the jury instructions on felony murder. The court rejected both of these claims, finding that trial prosecutor fairly tested the limits of the expert's opinion and that the trial court did not err when it failed to define the terms in the jury instructions. Accordingly, the court affirmed Forde's conviction and death sentence. AAG Susanne Blomo successfully briefed and argued the case.

In addition, the following cases were also affirmed by the Arizona Supreme Court during fiscal 2014:

*State v. Robert Hernandez*  
*State v. Christopher Benson*  
*State v. Christopher Payne*  
*State v. Efred Medina*  
*State v. Stephen Reeves*  
*State v. Israel Naranjo*

## **II. AGO Civil Appeals and Elections Section Year in Review.**

### **Major Accomplishments in Fiscal Year 2014**

#### **Appellate Brief Review Statistics**

Appellate briefing was prolific in FY 2014. SGO attorneys reviewed 360 appellate briefs in FY 2014, spanning work in Arizona state appellate courts (311 briefs), the Ninth Circuit (46 briefs), the United States Supreme Court (2 briefs), and other courts (1 briefs). SGO attorneys also participated in 25 moot court exercises.

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

The United States Supreme Court decided a major voting rights case briefed by SGO and argued by Attorney General Horne during the October 2013 term. In *Arizona v. Inter Tribal Council of Arizona*, the Court held that the National Voting Rights Act effectively required the states to treat the federal registration form as sufficient evidence of citizenship without additional proof for purposes of federal elections, but also held that Arizona can ask the federal Election Assistance Commission, which creates the federal form, to include a requirement of additional proof of citizenship in the form, and to bring different legal challenges if the EAC refuses to do so. Arizona has brought those legal challenges in partnership with the State of Kansas (see discussion below).

In April 2014, the Supreme Court upheld the constitutionality of Michigan's constitutional provision that bars discrimination and preferential treatment in public education, employment, and contracting in *Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means*, 134 S. Ct. 1623 (2014). Arizona prepared the states' amicus curiae briefs in support of Michigan. Like Michigan voters, Arizona voters enacted a constitutional amendment barring discrimination and preferential treatment in public education, employment, and contracting. In upholding Michigan's law, the Supreme Court noted that "Michigan voters acted in concert and statewide to seek consensus and adopt a policy on a difficult subject against a historical background of race in America that has been a source of persisting injustice" and determined that "[t]here is no authority in the Constitution of the United States or in this Court's precedents for the Judiciary to set aside" the Michigan law. 134 S. Ct. at 1637-38.

## Certiorari Petitions Filed in 2013-14

*Betlach v. Planned Parenthood*, Sup. Ct. No. 13-621. The *Betlach* petition resulted from the Arizona Attorney General's defense of A.R.S. § 35-196.05(B), which provided that neither Arizona nor any political subdivision thereof may "enter into a contract with or make a grant to any person that performs nonfederally qualified abortions or maintains or operates a facility where nonfederally qualified abortions are performed for the provision of family planning services." When Planned Parenthood of Arizona challenged the law, the Arizona Attorney General defended it as an appropriate legislative decision to end the use of taxpayer funds for abortion. The Ninth Circuit struck down the statute, holding that (1) 42 U.S.C. § 1396a(a)(23) compels Arizona to contract with Medicaid providers that perform nonfederally qualified abortions and reimburse those providers with state revenue, and (2) 42 U.S.C. § 1396a(a)(23) confers a private right of action, enforceable under 42 U.S.C. § 1983, to obtain Medicaid services from any professionally competent provider. SGO challenged the ruling because it strips the States of their prerogative to rationally administer their respective state Medicaid programs as they see fit.

*Ryan v. Detrich*, Sup. Ct. No. 13-868. This case is one of many in which the Arizona Attorney General has attempted to limit the Ninth Circuit's expansive interpretation of the procedural rights granted to death row inmates under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). In passing AEDPA, Congress intended to reduce the extraordinary delays in federal habeas corpus proceedings, which can add a decade or more to the post-conviction phase of death penalty cases. SGO sought Supreme Court review on the ground that the Ninth Circuit improperly interpreted *Martinez v. Ryan*, a 2012 Supreme Court decision, to provide a "more lenient rule . . . for excusing procedural default" than *Coleman v. Thompson*, a 1991 Supreme Court decision. The petition also urged Supreme Court review to correct the Ninth Circuit's improper removal of the prejudice component of ineffective assistance of post-conviction counsel claims.

*Ryan v. Murdaugh*, Sup. Ct. No. 13-1057. *Murdaugh*, like *Detrich*, was also part of this office's ongoing effort to cabin the Ninth Circuit's defense-oriented interpretations of Supreme Court precedent. Here, SGO argued that the Ninth Circuit exceeded its authority to grant a writ of habeas corpus when it expanded the rule in *Ring v. Arizona* to create a Sixth Amendment right to jury findings of mitigation evidence at sentencing. The Ninth Circuit decision had held that the jury's failure to consider mitigating circumstances had a "substantial and injurious effect" on the sentence of death and therefore required a resentencing in this 19-year-old murder case.

*Horne v. Isaacson*, Sup. Ct. No. 13-402. The *Isaacson* case arose from the Arizona Attorney General's vigorous but unsuccessful defense of H.B. 2036 (2012), a law that regulates abortions beginning in the 20<sup>th</sup> week of pregnancy. After prevailing in the United States District Court, the Ninth Circuit declared the law unconstitutional. The Arizona Attorney General and the Maricopa County Attorney – who were both named as defendants in the action filed by abortion proponents – jointly petitioned for review, challenging the Ninth Circuit's decree that the Supreme Court's "viability" framework precludes Arizona from regulating abortion after the 20<sup>th</sup> week of pregnancy, notwithstanding significant valid state interests left unexamined in the prior Supreme Court cases. The petition sought to expand regulatory considerations under *Roe v.*

*Wade* and *Planned Parenthood v. Casey* beyond “viability” to recognize state interests in preventing fetal pain, protecting against a significantly increased health risk to the mother, and upholding the integrity of the medical profession.

### Supreme Court Amicus Briefs

*White v. Woodall*, Sup. Ct. No. 12-794. In this case SGO drafted a merits stage amicus brief in support of the Commonwealth of Kentucky in a Supreme Court case arising out of a Sixth Circuit case that declared a death sentence unconstitutional for want of a “no adverse inference” instruction. Thirteen states joined our brief. We argued that the Sixth Circuit decision degraded fairness and accuracy in sentencing by misapplying the prophylactic Fifth Amendment rule formulated in *Carter v. Kentucky*, 450 U.S. 288 (1981). That rule requires courts to instruct juries not to draw an adverse inference from a defendant’s silence regarding disputed elements of the state’s case. Here, the defendant’s admissions and concessions had established all of the adverse facts that rendered him eligible for the maximum allowable punishment. Therefore, the no-adverse-inference instruction neither shielded the defendant’s invocation of his Fifth Amendment right to remain silent from impermissible inferences nor preserved the state’s burden of proof. We also argued that giving the no-adverse-inference invites confusion and threatens to corrupt the deliberations in these circumstances. The Supreme Court agreed and reversed the Sixth Circuit in a 6-3 decision.

*Hall v. Florida*. 12-10882 5/27/14 (merits) In this case SGO drafted a merits stage amicus brief in support of the State of Florida in a Supreme Court case revisiting the standards that apply when a state determines whether a capital murder defendant is mentally retarded and thus ineligible for capital punishment. Nine other states joined Arizona’s brief. The brief argued that it would be impracticable and self-defeating to require states to derive their substantive criteria for assessing mental retardation from constantly evolving practices and standards developed by mental health organizations. Rather than “outsourcing” legal standards to practitioners, the brief argued that the Eighth Amendment and controlling cases only require states to reasonably define terms of a medical nature than have legal significance. The Supreme Court ultimately ruled against the State of Florida, holding that a state standard which requires a defendant to establish an IQ test score of 70 or below before being permitted to submit additional intellectual disability evidence is unconstitutional because it creates an unacceptable risk that persons with intellectual disabilities will be executed.

*Riley v. California* 13-132 6/25/14 (merits) In this case SGO drafted a merits stage amicus brief in support of the State of California in a Supreme Court case applying the search-incident-to-arrest warrant exception to the search of cell phone contents. Fourteen states joined Arizona’s brief. Our brief argued that the law enforcement interest is amplified, not diminished, by its application to new technology, including cell phones; that evidence on a cell phone is ephemeral and may be lost if officers are required to obtain a warrant before a search; that the danger to police officers is at its pinnacle at the time of arrest and they should be able to take all reasonable measures to protect themselves, including searching a cell phone to help identify the arrestee and determine whether an arrestee’s associates are in the area and pose a risk to them. The brief also highlighted the need for clear, workable rules to ensure officer safety and to



preserve evidence. The Supreme Court ultimately ruled against Florida and held that the warrant exception does not apply to cell phone contents.

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

The Solicitor General's Office prepared the answering brief and presented oral argument in *Planned Parenthood Arizona Inc. v. Humble*. The plaintiffs challenged the constitutionality of Arizona's statute, A.R.S. § 36-449.03(E)(6), which requires an abortion clinic to administer abortion inducing drugs in compliance with a 2000 FDA protocol. The plaintiffs sought to enjoin enforcement claiming that the statute and related rule imposed an undue burden on a woman's right to choose to have an abortion. The claim was based on differences between the FDA protocol and the plaintiffs' preferred protocol, which differed in the amount of drugs administered, the length of time in which the drugs could be used (9 versus 7 weeks into a pregnancy), and the number of visits to the clinic. The district court denied the motion for a preliminary injunction and the plaintiffs filed an emergency interlocutory appeal. The Ninth Circuit reversed in a published 3-0 decision, finding that the additional cost, inconvenience and "stigma" under the FDA protocol "outweighed" Arizona's interests in the regulation. SGO filed a petition for writ of certiorari on June 3, 2014, citing a circuit split created by the Ninth Circuit's opinion and contending that the Ninth Circuit's analysis contravenes Supreme Court precedent.

In May 2014, a divided panel of the Ninth Circuit held that certain provisions of the Arizona Code of Judicial Conduct violated the First Amendment in *Wolfson v. Concannon*, 750 F.3d 1145 (9th Cir. 2014). The panel struck down the prohibitions of personal solicitation of campaign contributions, political activities, and actively taking part in other political activities as applied to non-judicial candidates for judicial office. The Solicitor General's Office filed a petition asking the entire Ninth Circuit reconsider the panel decision, arguing that Code prohibitions are necessary to ensure judicial impartiality and the appearance of judicial impartiality.

Additionally the Solicitor General's Office participates in all the federal court 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, habeas corpus claims, 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

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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.

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.

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

In fiscal year 2014, 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.

Attorneys from the Solicitor General’s Office participated in the training program by the Secretary of State’s Office to become certified election officers, which is mandatory for county election officials under A.R.S. § 16-407. The SGO attorneys also participated as instructors in the initial certification and recertification program with programs entitled “Election Law Update” and “Nomination Petition Challenges.” The Solicitor General also served on the faculty of the Arizona State Bar’s biannual CLE seminar on election law, where addressed practitioners on the topic of the Voting Rights Act and “Life After *Shelby County*.”

The Secretary of State’s Office publishes the Election Procedures Manual biennially in accordance with A.R.S. § 16-452 and the Attorney General and Governor must approve the Manual. While the intended audience for the Manual is primarily the county election officials, concerns from the general public were taken into account. The Secretary’s Office revised the Manual in November, 2013 and May, 2014. Attorneys from the Solicitor General’s Office attended public meetings with stakeholders, assisted the Secretary’s Office with revisions, and advised the Attorney General during the approval process.

Attorneys from the Solicitor General's Office also provided direct advice to the Secretary of State's Voting Equipment Certification Advisory Council, a statutorily-created board that allows the State to certify that all voting equipment used in state elections conforms to the State's requirements for accuracy, secrecy, and security in casting and tabulating ballots. A.R.S. § 16-442. SGO attorneys provided both advice and representation at public meetings during which end-to-end voting equipment systems were tested and certification considered and, in some cases, granted.

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

In June, 2013, the United States Supreme Court issued its Opinion in *Arizona v. Inter Tribal Council of Arizona*. 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 also held that Arizona could again ask the Election Assistance Commission ("EAC"), a federal agency, to include Arizona's evidence-of-citizenship among the Federal Form's state-specific instructions.

*Kobach v. EAC* - In this case, the State of Arizona and the Secretary of State joined the State of Kansas and its Secretary of State in a lawsuit against the EAC and its acting Executive Director, Alice Miller following the roadmap established in the *Inter Tribal Council* Opinion. We alleged that the EAC had a nondiscretionary duty to include the evidence-of-citizenship requirement on the Federal Form. The district court for the district of Kansas agreed and granted injunctive relief. Currently, the case is on appeal to the Tenth Circuit. The Court heard oral argument on August 25, 2014 and is expected to issue a decision within the next few weeks.

Shortly after the *Inter Tribal Council* Opinion was issued, the Secretary of State asked for an Attorney General Opinion regarding whether a dual voter registration system was necessary to implement both Proposition 200 and the National Voter Registration Act. The *Inter Tribal Council* Opinion explicitly noted that it had no effect on the State's ability and right to require evidence of citizenship for registration for elections for state and local issues. The Solicitor General's Office drafted an Opinion for the Attorney General that stated that applicants using the Federal Form without sufficient information from which citizenship can be determined are not eligible to vote in state and local elections.

As noted above, the Secretary of State published revisions to the Election Procedures Manual. The May 2014 version contained numerous procedural changes necessary to implement a separate voter registration system to handle applicants using the Federal Form without providing evidence of citizenship.

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

In *Shelby County, Alabama v. Holder*, the United States Supreme Court struck down Section 4(b) of the Voting Rights Act, which provided the coverage formula for determining which jurisdictions were subject to the USDOJ 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. On June 25, 2013, the Court issued its Opinion. Thereafter, Arizona was no longer a covered jurisdiction required to comply with preclearance. Shortly thereafter, the Solicitor General's Office prepared and the Attorney General issued an Opinion regarding the effect of *Shelby County* on withdrawn preclearance submissions.

### **Campaign Finance Enforcement**

This fiscal year, the Solicitor General's Office received 41 campaign finance referrals relating to failure to file January 31, 2014 campaign finance reports. Five of those committees have been brought into compliance, while the rest are subject to ongoing enforcement efforts. SGO attorneys and staff met with committees subject to enforcement orders to assist with compliance and to correct technical violations in paperwork. SGO has continued to monitor enforcement matters sent to collections for previous election cycles and has conducted research and consulted with collections to determine possible methods to increase the overall collectability of compliance orders and penalty orders. SGO continues to enforce failure to file matters referred for previous election cycles, including settlement of aged accounts and additional referrals to collections.

### **Lobbying Enforcement**

The Secretary of State is the filing officer for lobbyists. Under the lobbying statutes, principals and public bodies that engage in lobbying must register with the Secretary. In addition, the principals and public bodies must file annual reports and designated lobbyists and designated public lobbyists must file quarterly reports with the Secretary. The Secretary's Office refers persons and entities who fail to comply with the registration and reporting requirements to the Solicitor General's Office as reasonable cause matters. In this fiscal year, the Secretary's Office made lobbyist enforcement a higher priority than in previous years. The Secretary referred 50 lobbyists for failure to file their 2013 third quarter report, 35 for failure to file the 2013 fourth quarter report, and 71 for failure to file the 2014 first quarter report. Of those, this office worked with the Secretary's Office to bring 153 lobbyists into compliance and sent 2 to collections. The Secretary referred 41 public bodies and principals for failure to file their biennial registrations, and all are now in compliance or have terminated. The Secretary also referred 57 public bodies and principals for failure to file annual reports, and all are now in compliance.

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

Attorneys from the Solicitor General's Office continued to advise the Citizens Clean Elections Commission. This included advice on interpreting the scope of the Commission's statutory authority and other matters attendant to statutory revisions passed in the 2014 legislative session. SGO also litigated an evidentiary hearing in which it successfully defended the Commission's decision to treat a candidate as ineligible for filing.

## **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.

*Gallardo v. State of Arizona* – In this highly publicized case, SGO successfully defended the validity of A.R.S. § 15-1441(I), a statute that added two at-large seats to community college governing boards in counties of 3 million or more, against a claim that it violated the Arizona constitution's prohibition against special laws. The superior court found that the statute met all three criteria to qualify as a valid general law under Arizona case law: rationality, inclusiveness and elasticity. The plaintiffs appealed on an expedited basis and the Arizona Court of Appeals reversed in a 3-0 decision, finding the statute unconstitutionally inelastic on the ground that only Maricopa County would qualify for many ensuing decades. SGO successfully petitioned for review of that decision, arguing that the court's "near future" requirement undermined the rationality and inclusiveness prongs and left the legislature hamstrung in its ability to respond to problems related to population growth. On August 26, 2014, the Supreme Court granted relief, reversing the Court of Appeals and ordering Maricopa County to include candidates for the at-large seats on its November, 2014 ballot.

*Arizona Green Party v. Bennett* - The Arizona Green Party alleged that the deadline for filing new party petitions for ballot recognition is unconstitutional because it is too early. A.R.S. § 16-803 requires a petition for a new political party to be filed by no later than one hundred eighty days before the primary election. The district court granted the Secretary's cross-motion for summary judgment. The Party appealed to the Ninth Circuit and briefing is not yet completed.

*Arizona Libertarian Party v. Bennett - 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 Parties' first and fourteenth amendment rights. Specifically, A.R.S. § 16-152 dictates the format for the paper 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 the Secretary of State. The parties appealed and this case is fully briefed and the parties are awaiting the scheduling of oral argument or a decision by the Ninth Circuit.

*Arizona Public Integrity Alliance ("AZPIA") v. Bennett* - The AZPIA and several individual voters alleged that a portion of A.R.S. § 16-322(A) is unconstitutional. That provision requires candidates for the U.S. Senate and for statewide office to obtain at least one-half of one per cent of the registered voters for the candidate's party in three counties in order to qualify for the ballot. Customarily, most candidates choose the less populated counties, because a smaller number of signatures is consequently required. AZPIA alleged that this resulted in a dilution of the strength of a voter's signature in the more populated counties. Because two binding Ninth

Circuit cases were directly on point, the State conceded the unconstitutionality of this statutory provision. Currently, the parties are still litigating the issue of attorneys' fees.

*Galassini v. State* – In this federal district case, the court ruled on summary judgment motions filed during the previous fiscal year and found that Arizona's statutes governing the definition of political committees and the limitation on any campaign finance registration or disclosure requirements for committees that raise or spend less than \$500 to be unconstitutional. The Court indicated its willingness to enjoin the enforcement of any Arizona statutes which require the definition of political committee to provide meaning to the statute. Upon receipt of the order, SGO attorneys have conducted extensive additional briefing to prevent the Court from entering any injunctive relief. The parties have also participated in mediation.

*City of Tucson v. State* – In this lawsuit, the cities of Phoenix and Tucson sued for a permanent injunction declaring that A.R.S. § 16-204, as amended in 2012, was unconstitutional and unenforceable against any charter cities. While the previous version of the statute permitted charter cities to hold their elections on four specified days per year, the recent amendments required that the cities hold mayor and council elections during the fall, even-year dates on which the state and federal candidate elections are held. The trial court held a two-day bench trial to determine the extent to which forced alignment would impose burdens on the affected cities. The State presented the testimony of its expert witness, who testified as to the anticipated voter turnout gains should election alignment be mandated. After an adverse ruling from the trial court, the State appealed the ruling to the Court of Appeals. The cities of Douglas and Tempe filed amicus briefs in opposition to the State on appeal. After briefing and argument, Division Two of the Court of Appeals upheld the trial court's ruling. SGO is presently preparing a petition for review to the Arizona Supreme Court.

*City of Winslow v. State* – The City of Winslow and intervenor City of Prescott sued the state over the 2012 amendments to A.R.S. § 16-204, which would have forced Winslow to align its candidate elections with the fall, even-year dates on which the state and federal candidate elections are held. This matter was stayed pending resolution of the *City of Tucson* litigation and appeals. The parties have filed periodic status reports to the court to maintain the stay.

*City of Douglas v. State* - The City of Douglas sued the state over the 2012 amendments to A.R.S. § 16-204, which would have forced Winslow to align its candidate elections with the fall, even-year dates on which the state and federal candidate elections are held. This matter was stayed pending resolution of the *City of Tucson* litigation and appeals. The parties have filed periodic status reports to the court to maintain the stay.

The Solicitor General's Office is defending the constitutionality of Arizona's constitutional provision and statutes limiting marriage to opposite-sex couples in two 42 U.S.C. § 1983 cases seeking declaratory and injunctive relief filed in the Federal District Court for the District of Arizona. In *Connolly v. Roche*, the plaintiffs sued the clerks of court in three Arizona counties contending that the clerks' refusal to provide several same-sex couples with marriage licenses violated the Fourteenth Amendment to the United States Constitution's Substantive Due Process and Equal Protection Clauses. The plaintiffs also contended that Arizona's failure to

recognize several same-sex marriages conducted in other states violated the same clauses, but did not sue any Arizona defendants who had refused to recognize their marriages.

### **Initiative Challenges**

The Secretary of State is the filing officer for statewide ballot measures. For the 2014 election cycle, no citizens' initiatives qualified for the ballot. There are three ballot measures for the upcoming election, two of which were referred by the Legislature and the third is a recommendation from the Commission on Salaries to increase the legislative salaries. In accordance with A.R.S. § 19-125(D), the Secretary of State drafted the yes/no ballot language and descriptive titles for these ballot measures to be included on the ballots and in the publicity pamphlets. Upon recommendation from the SGO, the Attorney General approved the draft language.

### **Redistricting Litigation**

There are three lawsuits pending concerning the legislative and congressional maps drawn by the Arizona Independent Redistricting Commission. All of the plaintiffs in these three lawsuits named the Secretary of State as a nominal party as he is charged with implementing the maps.

*Arizona State Legislature v. Arizona Independent Redistricting Commission ("AIRC")* - The Legislature alleged in federal court 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 that is specifically granted to the Legislature. A three-judge panel ruled in favor of the Commission, with a partial dissent. Pursuant to 28 U.S.C. § 1253, the Legislature filed a direct appeal to the U.S. Supreme Court on June 25, 2014. The Legislature filed its Statement of Jurisdiction, to which the AIRC filed a Motion to Dismiss or Affirm, and the Legislature replied. The case was distributed for conference by the Court on September 29, 2014. The precise issue for review is "whether the provision of the Arizona Constitution that divests the Arizona Legislature of any authority to prescribe congressional district lines violates the Elections Clause of the United States Constitution, which requires that the time, place, and manner of congressional elections be prescribed in each state by the 'Legislature thereof.'"

*Harris v. AIRC* - Plaintiffs alleged in federal district court that the legislative map violated 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. In a two-to-one decision, the district court found in favor of the Commission. Pursuant to 28 U.S.C. § 1253, the plaintiffs filed a direct appeal to the U.S. Supreme Court on June 25, 2014. Briefing has not yet been completed.

*Leach v. AIRC* - Plaintiffs alleged in state court that the AIRC violated the Arizona Constitution by failing to follow the required steps in drafting the congressional map. Discovery

is still ongoing and the trial has not yet been scheduled. Cross-motions for summary judgment are expected in May, 2015.

### **Nominating Petitions Litigation**

The Secretary of State was named as a party in twenty-two nomination petition challenges. In each of these cases, a qualified elector sued to disqualify the real party in interest candidate from the ballot. The Secretary of State is an indispensable party that must be named in challenges against congressional, statewide, and legislative candidates. Several of the cases involved county or city candidates, in which the Secretary was erroneously named as a defendant. Eleven of the cases proceeded to hearing, with one of them appealed to the Arizona Supreme Court. In that case, *Shooter v. Farmer*, there were allegations that Candidate Toby Farmer forged several petition signatures. The superior court eliminated the challenged signatures, but found that there was not sufficient evidence from which to infer that the candidate committed forgery, and the Supreme Court agreed. Upon request from the challenger, this matter has been referred to the Criminal Division for further investigation, if warranted.

### **Other Election Matters**

In 2013, the Legislature passed H.B. 2593, which greatly altered the campaign finance scheme by establishing that the primary election and the general election are separate elections to which separate contribution limits apply. The Attorney General's Office issued an Opinion addressing the implementation of these two contribution limits. Thereafter, the Legislature amended the campaign finance scheme again during the 2014 legislative session to correct several unintended consequences created by H.B. 2593. The Solicitor General's Office worked with the Secretary's Office and the Clean Election Commission to implement these changes and address concerns from candidates and the public.

### **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 2014, the Solicitor General's Office reviewed 360 briefs and coordinated moot court sessions in connection with approximately 25 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 drafting and publication of Attorney General opinions. In fiscal year 2014, the Attorney General received 24 opinion requests and issued 14 formal opinions. Those opinions addressed topics including the Vacancy in the Legislature, Board of Technical Registration with Regulating the Alarm Industry, Financial Treatment of Charter School Pupils at a District-sponsored Charter School, House Bill 2178 and



Gift Clauses of the Arizona Constitution, Participation of Non-Traditional Teachers in a School's Classroom Site Fund Performance Pay Plan, Campaign Finance, Preemption of Tucson Ordinances, Effect of Shelby County on Withdrawn Preclearance Submissions, Effect of Shelby County on Withdrawn Preclearance Submissions, Lobbying, voter registration, Charging Copying Fees Under Arizona's Public Records Law, and Regulation of the Alarm Industry Pursuant to A.R.S. § 32-122.07(A), and the Interpretation of Arizona Law Dealing With Real Estate Broker's Licensure as it Relates to Managing Properties.

### **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.

In fiscal year 2014, AGO library patrons (AGO attorneys and paralegals) visited, emailed, or telephoned the AGO library approximately 1,100 times between July 1, 2013 and June 30, 2014.<sup>2</sup> Of these interactions, 40.1 percent were in-person visits to the library; 18 percent of the time library patrons accessed the library by telephone; and 41.9 percent of the time library patrons accessed the library by email. Assistance was requested from AGO librarians 79.8 percent of the times that interactions occurred. The requests for assistance were diverse but primarily consisted of troubleshooting requests, research guidance, Inter-library loan requests, historical statute research, legislative history research, and complex research requests.

The above figures project patron library usage to be approximately 5 interactions per day with approximately 4 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 materials and supplies, and keeping library materials updated. The Library Director also heavily participates in negotiations with electronic research database vendors.

Because competitive grant-writing is centered on exemplary research and writing skills, the AGO librarian is instrumental in drafting funding proposals when funding opportunities present themselves. During FY14, the AGO librarian researched and drafted grant proposals for the Community Outreach and Education Division, the Public Advocacy Division, and the Criminal Division of the Attorney General's Office.

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

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<sup>2</sup> This metric was calculated based on AGO library patronage data that was collected for 219 of a possible 251 days (or 87% of the days available for collection). This captured data does not include requests to activate/deactivate access to electronic research databases.

participants, and keeping records of the trainings provided. Additionally, during the past fiscal year the AGO librarian provided several continuing legal education classes to attorneys and paralegals on Arizona on-line legislative history research.

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 print resource materials. An SGO paralegal also serves as research back-up for Library and Research Services. These employees manage the library in the librarian's absence.

During this fiscal year, the LRS Library Director and SGO paralegal attended a three day Attorney General Librarians' Initiative (AGLI) of the National State Attorney General's program at Columbia University. This conference allowed AG librarians to network and discuss library issues common to AG librarians. An AGLI listserv has been established since this meeting and has proven to be a great resource for Attorney General law librarians.

### **Ethics**

Special Counsel for Ethics and Training lists the following accomplishments for Fiscal Year 2014:

- Provided daily office-wide assistance and advice on a broad range of ethical issues, including attorney ethics, public employee ethics, secondary employment and volunteer activity, conflict of interest and screening.
- Served as Chairperson of AGO Ethics Committee and AGO CLE 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 as needed.
- Provided periodic ethics trainings for new attorneys in Protective Services Section.
- Gave a presentation on Ex Parte communications at the PAD retreat on January 10, 2014.
- Chaired an AGO committee tasked with reviewing and updating the AGO rate schedule for recovery of attorneys' fees. Drafted a memo recommending adoption of a new rate schedule and drafted an amended office policy regarding same.
- Coordinated revision of the Arizona Agency Handbook.

- Worked with ADOA to create an on-line Public Service Orientation Training for Elected Officials and Agency Heads, which AGO is statutorily required to provide.
- Served on the Arizona State Bar Association’s ethics committee.
- Served as a presenter for the State Bar program on “Ethical Morning at the Movies” with Larry Cohen.
- Served as a presenter at the 2014 State Bar Convention on “Ch-Ch-Ch-Ch-Changes: Ethical Considerations for Lawyers in Transition.”

While many of these accomplishments were significant, the Ethics Coordinator should be recognized in particular for successfully leading the effort to comprehensively revise the Agency Handbook. Each chapter was thoroughly updated, revised, and subjected to two levels of review. That momentous endeavor reflected a policy decision to exceed the statutory requirement of decennial publication in favor of revising the handbook continually, in an effort to make it more useful and relevant to those who rely on it. Consequently, the 2014 edition contains vastly more – and more up-to-date – information than it would otherwise contain, particularly in the areas of personnel, procurement, public records, discrimination law, administrative adjudications, and rulemaking.

### **Continuing Legal Education**

The Solicitor General’s Office, together with the Office’s Continuing Legal Education Committee, coordinates continuing legal education programs to ensure that lawyers have relevant educational opportunities that will fulfill the State Bar’s 15 hour per year continuing legal education requirement. In fiscal year 2013-14, we offered 21 continuing legal education programs worth a total of 84 CLE hours, 12 hours of which qualified for ethics credit.<sup>3</sup> The programs covered a wide range of legal topics. Approximately 1040 people attended these programs, earning a total of 3076.5 CLE hours. These figures do not include those who may have viewed the program remotely from locations other than Tucson, or those who may have viewed the videos of the programs subsequently and claimed self-study MCLE credit. At the average prevailing rate charged by the State Bar for continuing legal education programs (\$39 per CLE credit), the approximate value to the office of the CLE program is at least \$119, 983.50. For additional information and a break down by program, see the attached spreadsheet.

### **NAGTRI Coordination and In-House Training**

- Jo Foster, Special Counsel for Ethics and Training served on the Advisory Board for the National Attorneys General Training and Research Institute (**NAGTRI**) and attended and presented at annual meeting in New York City. NAGTRI ranks Arizona AGO ninth in terms of the top states by total number trained.

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<sup>3</sup> These figures include four webinars offered through NAGTRI, and two trial advocacy programs provided by NAGTRI in our offices. The figures do not include NAGTRI programs that AGO employees attended elsewhere.

- Ms. Foster Coordinated nominations for Arizona's Assistant Attorneys General to attend NAGTRI training programs which resulted in 18 AAGs receiving scholarship funding to attend national NAGTRI training programs in 2013-14.
- Ms. Foster Coordinated several NAGTRI training programs provided in-house, at no cost to the AGO. These programs included four webinars, a week-long Advanced Trial Advocacy program and a two-day Trial Advocacy program for PSS Attorneys. Approximately 180 AGO attorneys and other personnel attended in-house NAGTRI programs, which provided a total of 1405.5 hours of CLE credit to the attendees. The approximate value to the office of these in-house NAGTRI programs is \$54,498.50. The actual cost to NAGTRI to provide the training was \$30,592.00; \$15,726.00 for the Advanced Trial Advocacy program, and \$14,866.00 for the Trial Advocacy Training for PSS. For additional information and a break down by program, see the attached spreadsheet.
- Ms. Foster served as faculty presenter for two NAGTRI mobile training programs:
  - Representation of State Agencies, (for the Alaska Attorney General's Office), September 30 - October 1, 2013 (2 presentations):
    - Social Media: "Whoops I Tweeted Again!" – Legal Social Media From Fail to Win
    - Civility: Creating and Sustaining a Culture of Professionalism
  - Representation of State Agencies (Regional program offered to all AGOs) May 29-30, 2014 (2 presentations):
    - State Attorney General: Legal Advisor and Criminal Prosecutor
    - Ethical Considerations for a Public Law Practice
- Ms. Foster participated in trial run of NAGTRI faculty development course held at the National Advocacy Center in Charlotte, NC, May 15-16, 2014.

## **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. In fiscal year 2014, the team consisted of 20 members.

In fiscal year 2014, the team opened investigations of 38 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 40 public bodies. Presently, there are investigations open against 80 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 170 Board meetings.

Attorney General's Office  
Office of the Solicitor General  
Fiscal Year 2014 CLE Presentations

No	Date	Title of Presentation	Comment	Ethics	CL E Hrs	Attendee s Phoenix	Attendee s Tucson	Total Attendee es	Total CLE Hours	Value
1	09/20/13	NAGTRI Webinar: Hiding Tracks	NAGTRI		1.5	3	0	3	4.5	\$ 179.50
2	09/27/13	Preparation of Cross Examination of Expert Witness	Paul Katz		2	32	2	34	68	\$ 2,652.00
3	10/25/13	NAGTRI Webinar: Mobile Devices	NAGTRI		1.5	6	0	6	9	\$ 351.00
4	12/03/13	Civil Procedure	Larry Cohen		3	38	6	44	132	\$ 5,148.00
5	12/11/13	Avoiding the Procurement Blues: What Every Government Lawyer Should Know	Debra Sterling		1.5	37	1	38	57	\$ 2,223.00
6	01/15/14	Book Club Math on Trial	Susan Myers		1	8	1	9	9	\$ 351.00
7	01/24/14	Statistics and Probabilities: Overcoming Our Distrust and Learning to Use Them Effectively in Litigation	Howard Cabot		2	28	2	30	60	\$ 2,340.00
8	2/10/2014-2/15/2014	NAGTRI Advanced Trial Advocacy Training	NAGTRI	1	25	30	0	30	750	\$ 29,250.00
9	02/10/14	Effective & Ethical Fact Witness Prep	NAGTRI	1	1	17	0	17	17	\$ 663.00
	02/10/14	Persuasive Opening Statements & Closing Arguments	NAGTRI		1	12	0	12	12	\$ 468.00
	02/11/14	Persuasive Direct & Cross Examination	NAGTRI		1	14	0	14	14	\$ 546.00
	02/11/14	Intro and Use of Persuasive Exhibits	NAGTRI		1	17	0	17	17	\$ 663.00
	02/12/14	Working with Experts	NAGTRI		1	7	0	7	7	\$

No .	Date	Title of Presentation	Comment	Ethics	CL E Hrs	Attendees Phoenix	Attendees Tucson	Total Attendees	Total CLE Hours	Value
										273.00
	02/19/14	Webinar: Motion to Suppress	NAGTRI		1	1	0	1	1	\$ 39.00
10	03/05/14 - 03/06/14	NAGTRI Trial Advocacy Training for PSS	NAGTRI		13.5	40	0	40	540	\$ 21,060.00
11	03/05/14	Fundamentals of Effective Cross Examination	NAGTRI		1	5	0	5	5	\$ 195.00
	03/05/14	Methods & Ethics of Fact Witness Prep	NAGTRI	1	1	6	0	6	6	\$ 234.00
	03/05/14	Skills For Effective Direct Examination	NAGTRI		1	6	0	6	6	\$ 234.00
	03/06/14	Special Consideration in Preparing & Examining Expert Witnesses	NAGTRI		1	8	0	8	8	\$ 312.00
	03/06/14	An Experts Perspective	NAGTRI		1	3	1	4	4	\$ 156.00
	03/14/14	Finding Happiness Through Meditation	Judge Kessler	2	2	64	17	81	162	\$ 6,318.00
12	03/19/14	NAGTRI Webinar: First Amendment Considerations in Child Pornography Cases	NAGTRI		1	4	1	5	5	\$ 195.00
13	03/25/14	Unrepresented But not Unarmed- Managing the Pro Se Litigant	Bill Richards	1	2	66	6	72	144	\$ 5,616.00
14	03/28/14	Neurobiology of Crime Prevention: Answers, Insights or Illusions	Larry Cohen		1.5	32	7	39	58.5	\$ 2,281.50
15	04/22/14	Drawing the Line-How to Properly Identify and Plead Affirmative Defenses	Bill Richards		2	44	2	46	92	\$ 3,588.00
16	05/08/14	Effective Oral Advocacy in State and Federal Courts	Mary O'Grady		1	61	4	65	65	\$ 2,535.00
17	05/14/14	Independent Advice for Your Agency Clients: What is It?	Chris Munns	1	1	55	8	63	63	\$ 2,457.00
18	05/15/14	Legal Profession in Medieval	Jonathan	2	2	64	6	70	140	\$

No .	Date	Title of Presentation	Comment	Ethics	CL E Hrs	Attendee s Phoenix	Attendee s Tucson	Total Attendee s	Total CLE Hours	Value
		England: Its Origin and Its Initial Regulation	Rose							5,460.00
19	05/23/14	Ethics at the Movies	Larry Cohen	3	3	70	11	81	243	\$ 9,477.00
20	06/10/14	Public Records: What You Need To Know	Dennis Carpenter		1.5	71	4	75	112.5	\$ 4,387.50
21	06/26/14	Constitutional Crises-How Section 1983 Could Just Ruin Your Client's Day	Bill Richards		3	33	2	35	105	\$ 4,095.00
22	06/27/14	U.S. Supreme Court Review: Highlights of the 2013-14 Term	Paul Bender		2	75	5	80	160	\$ 6,240.00
23		<b>TOTALS</b>		12	84	957	86	1040	3076.5	-
									<b>GRAND TOTAL:</b>	<b>\$119,987.50</b>





**TOM HORNE**  
ATTORNEY GENERAL

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

**ANDREW PACHECO**  
DIVISION CHIEF COUNSEL

**FY2014 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.
- To investigate and prosecute Medicaid fraud; fraud in the Medicaid program; abuse, neglect and exploitation committed in Medicaid facilities or by Medicaid providers.
- To provide high quality investigative support to the Attorney General's Office and to law enforcement agencies throughout the State.

**II. Division GF Budget for FY13-14: \$4,210,000**

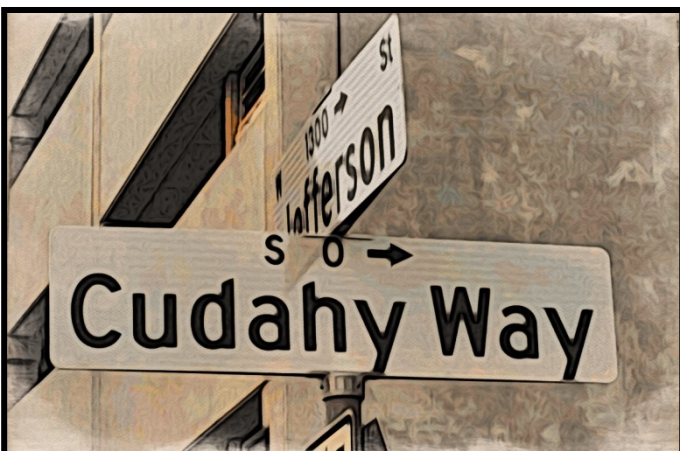
The Criminal Division (CRM) makes a positive impact on the lives of Arizona citizens by investigating and prosecuting a multitude of cases involving various types of crimes. CRM is also committed to providing a variety of services to the victims of these crimes. In addition to general funds, CRM also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

**III. Criminal Division Summary:**

**Andrew Pacheco, Division Chief**



The Criminal Division is divided into eight Sections: Alliance Section (ALL); Border Crimes Enforcement Section (BCS); 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).



In January 2014, the AGO hosted the unveiling of "Cudahy Way." The one block stretch of 14<sup>th</sup> Avenue located between both AGO buildings was renamed to honor former Assistant Attorney General Michael C. Cudahy who served Arizona citizens from October 1976 through June 2002, when he was forced to stop working due to illness. He served under five Attorneys General and was the Chief of the Criminal Division from 1992 through 2002. Michael Cudahy helped establish the Attorney General's Criminal Division and empaneled the very first State Grand Jury. It was also a point of pride that he had personally prosecuted a criminal case in each of Arizona's 15 counties. The event was attended by many fellow co-workers, judges, friends, family and former Attorneys General Robert Corbin, Grant Woods and Terry Goddard.

After his death in 2006, Mike remained an inspirational figure in the legal community and among the many employees upon whom he had such a positive influence. There are at least two awards given out each year that bear his name and honor his legacy. Since 2006, the Arizona State Bar Association has presented the Michael C. Cudahy Criminal Justice Award to a criminal prosecutor who during his or her career worked tirelessly to advance the principles of criminal justice by representing the public's interest with integrity, fairness, tenacity, creativity, brilliance and above all, professionalism. Each year the AGO presents a Michael C. Cudahy Mentoring Award to an AGO attorney and staff member whom exemplifies the spirit of mentoring Mike always demonstrated.



Vince Piano, Director

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



The Alliance Section provides support to the Southwest Border Anti-Money Laundering Alliance (Alliance). The Alliance is a consortium of the four Border State Attorney General's Offices, the Arizona Department of Public Safety (DPS), the Phoenix Police Department and the Arizona Department of Financial Institutions (AZ DFI). It distributed funds obtained through a 2010 \$96 million dollar Settlement Agreement between the AGO and Western Union to Arizona, California, New Mexico and Texas state law enforcement and the AZ DFI. Law enforcement entities in the Southwest border area, which includes the four Border States and Mexico, were eligible for funding. Details about the Alliance 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 force in Dallas, Texas. This anti-money laundering task force joins previous grantees in Albuquerque and Las Cruces, New Mexico; Los Angeles and San Diego, California; Phoenix, Arizona and Brownsville and Laredo, Texas. 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. These are in addition to the Alliance funded bulk cash interdiction operations to intercept drug money on the highways in Nogales, Kingman and Florence, Arizona and in Silver City, New Mexico.

The Alliance began its Law Enforcement Unity Program in February 2014. The Unity Program provides training and works to unify all Alliance law enforcement initiatives along the Southwest border. In addition, the Alliance unites law enforcement anti-money laundering efforts through training and annual conferences held throughout the Southwest and in Mexico. In FY14 it trained 1,729 students in 35 training events.

#### V. TRAC:



The Alliance's distribution of money transmitter transaction data to law enforcement is now administered by the Transaction Record Analysis Center (TRAC). TRAC was created by an Amendment to the Settlement Agreement with Western Union in January 2014. The Amendment provides TRAC with Western Union's full transaction data sent to or from locations within the Southwest border data area involving amounts of \$500 or more. The Southwest border area includes Arizona, California, New Mexico, Texas and Mexico. Western Union and the AGO agreed that expansion of the territorial scope of the data production under the Amendment will result in better analysis of potential money laundering transactions associated with organized criminal activity. TRAC provides access to this data through a secure internet connection pursuant to a Memorandum of Understanding (MOU) among the participating agencies. The TRAC will provide a forum for Western Union analysts and law enforcement analysts to study data so that together they can combat money laundering activities throughout the Southwest border region. The AGO and Western Union expect that this new agreement will form the basis of a new era of cooperation in fighting the movement of illicit money.

A recent example of the strategic and real-time law enforcement benefit of TRAC involves the analysis of human smuggling payments made in the Texas Rio Grande Valley where thousands of Central American children and young adults have been smuggled. Homeland Security Investigations (HSI) in collaboration with FinCEN, TRAC and federal agency partners identified sources and recipients of thousands of payments made to human smugglers. The results of this analysis will be used to target the money laundering cells associated with human smuggling organizations.

#### VI. Border Crimes Enforcement Section (BCS): Kimberly Ortiz, Section Chief



BCS specializes in fighting cartel-related drug trafficking and money laundering through court-authorized electronic interception and phone exploitation. BCS' efforts are focused against the Mexican cartels and United States based transportation cells involved in the smuggling of drugs, weapons, money and humans across Arizona's southern border. BCS also specializes in public corruption and complex financial fraud prosecutions, including mortgage fraud, securities fraud, identity theft, social security fraud, AHCCCS fraud, manufacturing of fraudulent credit cards

and other economic crimes. BCS 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 FY14 BCS reported the prosecution of 489 active, on-going cases and 369 new defendants. Drug seizures cumulatively totaled approximately: 15,973 pounds of marijuana, 42 pounds of methamphetamine and 31 pounds of cocaine. During this time period BCS assisted approximately 253 victims of crime and obtained approximately \$12,019,534 in court-ordered restitution for Arizona victims of economic crime. BCS also obtained approximately \$397,348 in court-ordered fines. Additionally, BCS-initiated civil forfeitures generated approximately \$2,418,490 of which 80% was distributed in asset sharing to law enforcement partners in southern Arizona.

**ii. Major Cases:**

**State v. Beltran:** In January 2013, Drug Enforcement Administration (DEA) agents, working with the AGO, began an investigation of Oscar Soza Beltran, a suspected methamphetamine dealer in Tucson, Arizona. On separate occasions DEA agents, acting in an undercover capacity, purchased a total of 1.25 pounds of methamphetamine from Beltran. A continuing undercover investigation revealed that Beltran would store and sell pounds of methamphetamine from his home, which was provided to him by Habitat for Humanity. Beltran was arrested and charged in August 2013. The AGO forfeited the home and returned it to Habitat for Humanity. In June 2014, Beltran was sentenced to five years in DOC.



**State v. Avendano-Cota, et al.:** In February 2014, agents with HSI assisted by local police agencies, served a search warrant on a suspected marijuana stash house in Tucson, Arizona. Agents learned that an intra-state marijuana trafficking organization was using dump trucks to bypass the Border Patrol checkpoints in Cochise County, Arizona to deliver bulk amounts of marijuana to Tucson area stash houses. HSI and AGO agents identified a dump truck loaded with marijuana as it made its delivery to the stash house. After serving

a search warrant, agents found 40 bales of marijuana weighing a total of 982.7 pounds, a specially modified pickup truck to transport marijuana and over \$10,000 in cash. Avendano-Cota and Fimbres-Molina, determined to be stash house coordinators present in the United States on Border Crossing Cards, were apprehended as they attempted to flee from the residence. In June 2014, both defendants were sentenced to 3.5 years in DOC and the \$10,000 was forfeited to the State.

**State v. Arbizo:** In September 2012, ASARCO Mining, Inc. learned that mining and security employees were involved in an on-going scheme to steal millions of dollars of raw copper. An exhaustive investigation revealed that thousands of pounds of copper were stolen from ASARCO, ultimately destined for Hong Kong. The criminal activity began in April 2006, when Arbizo, employed as a shift supervisor, began to coordinate the theft of copper by arranging for co-defendants to transport the copper out of the mine and to various importer/exporters. Arbizo allowed unregistered drivers into the mine and permitted their departures with copper loads without proper documentation. He would contact the co-defendants and instruct them to come to the mines, usually with a short 20-minute turnaround, and always late at night. The regular, cyclical theft of copper continued, utilizing different recycling companies and eventually identifying a California company capable of shipping the stolen copper to China, where the high demand would maximize profits. ASARCO calculated that Arbizo and his co-defendants stole approximately \$3 to \$4 million dollars of copper, priced at commodity pricing (estimated \$10 million value added loss). Defendant was convicted of Theft and Conducting an Illegal Enterprise and was sentenced to 2.5 years in DOC, followed by seven years supervised probation. He was also ordered to pay \$10 million dollars in restitution.



**State v. Iman:** From 2010 through 2012, Donna Jean Iman exploited the relationship she developed at church with a vulnerable victim, 92 year old World War II veteran Col. Thomas Gerbing. She deceived him into depositing over \$2.1 million dollars into her bank account. She preyed on his loneliness and vulnerability and deceived him with lies about fake medical ailments she claimed required numerous expensive hospitalizations and treatments. In a 30 day period, she conned him out of \$1.3 million dollars, leaving him almost penniless before she was arrested. She was convicted of Fraud and sentenced to 6.5 years in DOC and ordered to pay \$2 million dollars in restitution.

**State v. Escalante, et al.:** A joint investigation conducted by the Douglas Police Department and the AGO resulted in the indictment and conviction of three members of the Douglas, Arizona Escalante family. The head of this group, Gilberto Escalante was sentenced to an aggravated sentence of eight years in DOC after he was convicted of Money Laundering. His ex-wife, Niomi Escalante and sister Angelica Escalante, were both sentenced to five years probation. Niomi was also ordered to pay back approximately \$21,000 to the State for fraud committed against the AHCCCS and food stamp system. The plea agreements for all the individuals required that the defendants forfeit all interest in the property in Pirtleville, Arizona. This 36 acre property was purchased in 2007 by Angelica and Niomi while Gilberto Escalante was in prison serving a sentence for a conviction of Conducting an Illegal Enterprise stemming from his drug trafficking activities. While in prison, he directed the construction of a 2,500 square foot home on the property and a 3,000 square foot horse stable. This property was purchased and built with the money derived from Escalante's illegal drug trafficking activities.



**State v. Herman, et al.:** In March 2013, DEA agents, acting in an undercover capacity, met with James Herman and his source of supply, Salvador Ignacio Marruffo-Anaya to purchase methamphetamine. Herman and Marruffo-Anaya were responsible for providing pounds of methamphetamine to street level drug dealers in Benson and Sierra Vista, Arizona. Undercover agents purchased half a pound of methamphetamine and setup another deal to purchase methamphetamine and arrest Marruffo-Anaya and Herman. At the meeting location, officers arrested Marruffo-Anaya and seized over seven pounds of methamphetamine from his vehicle. Herman was later arrested by agents. In November 2013, Herman was sentenced to 2.5 years in DOC, followed by four years probation. Marruffo-Anaya, who was present in the United States without legal authorization, was sentenced to five years in DOC.



**State v. Villa, et al.:** An undercover operation into a methamphetamine trafficking organization conducted by DEA resulted in the indictment of four individuals in Pinal County, Arizona. These individuals were arrested after attempting to conduct the sale of 4.5 pounds of methamphetamine to undercover DEA agents. Raul Garcia and Luis Monge-Ramos was convicted of Conspiracy to Transport a Dangerous Drug and were sentenced to five years in DOC. Miguel Duran-Duran and Eslyn Villa rejected plea offers and exercised their right to jury trials. After their convictions at trial, Duran-Duran and Villa were sentenced to 12 years in DOC.

**State v. Pablos, et al.:** HSI's Tucson Financial Group initiated an investigation into the suspected money laundering activities of Ramona Othon who conspired with co-defendants to transfer money deposited in banks from outside Arizona and later withdrawn from a Tucson bank. The funds being transferred through these accounts are suspected to be proceeds of illegal activity because of the value of the transfers and the method of deposit and withdrawal—in amounts below the required reporting threshold of \$10,000. Specifically, from 2008 through 2011 over \$350,000 was deposited into Livier Perez's and Catalina Pablos' bank accounts and quickly withdrawn. Both Perez and Pablos entered into pleas for Facilitating the Illegal Conduct of an Enterprise and both were sentenced to three years supervised probation. Othon is currently pending arrest from a bench warrant.

**State v. Alewine:** In May 2013, after a multi-week surveillance operation by HSI, a search warrant was executed at the defendant's home where agents found approximately 540 pounds of marijuana. Also found in the home were scales for weighing, packing and wrapping material and inventory logs. A second team of HSI agents, who were following James Scott Alewine, stopped and arrested him for Possession for Sale of Marijuana. He was convicted of Attempted Possession of Marijuana for Sale and was sentenced to three years supervised probation.



**State v Carpio:** Joint Technological Education District (JTED) is a Pima County, Arizona public high school district providing free career technical education to all sophomore, junior and senior level high school students to give them a head start on college and careers. JTED serves students from public, private, charter and home-schools, as well as students who either have, or who are in the process of earning, a general education diploma (GED). The Pima County Sheriff's Office (PCSO) began investigating Carpio after the JTED's Chief Financial Officer found multiple discrepancies with expenditures and payments. The investigation revealed that Carpio had directed payments to her husband using fictitious vendor names. Upon reviewing bank records obtained during the investigation, detectives confirmed that approximately \$300,000 was embezzled from JTED and deposited into Carpio's shared bank account. Carpio was charged with Fraudulent Schemes and Artifices and Theft. She was convicted of Fraud Schemes and was sentenced to 3.5 years in DOC and ordered to pay \$288,000 in restitution.



**State v. Francisco, et al.:** Defendants operated a human smuggling ring for profit. Officers apprehended each of David Francisco's co-defendants on more than one occasion with a load of illegal aliens. Investigation of those cases revealed a connection between the co-defendants and Francisco. Phone calls established that Francisco was leading the operation. Francisco was convicted of Participating in a Human Smuggling Organization and was sentenced to six years in DOC. Michael Christensen was convicted of Human Smuggling and was sentenced to 2.5 years in DOC. Leah Stickel was convicted of Attempted Human Smuggling and was sentenced to three years probation and 200 hours of community service.

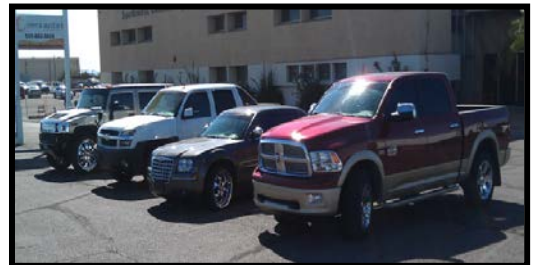
**State v. Orozco, et al.:** Defendants were suspected of operating an illegal enterprise in Pinal County, Arizona by importing and transporting marijuana for sale. In November 2012, DPS officers stopped a vehicle in Pima County, Arizona that contained several hundred pounds of marijuana. The driver of the load car fled, but some of the defendants were found in vehicles that appeared to be scouting for the load car. A couple weeks later, DPS stopped that car and discovered \$26,000 in cash. Eight defendants were convicted. Their plea agreements varied based on each defendant's role in the criminal enterprise, criminal history and level of cooperation. The primary defendants, a father and son, were convicted of Transporting Marijuana for Sale (Over the Statutory Threshold) and Soliciting Another to Transport Marijuana for Sale. Jose Orozco-Hernandez, the father, was sentenced to five years in DOC and Pedro Orozco-Robledo, the son, was sentenced to 2.5 years in DOC.

**State v. Morgan:** Defendant was the office manager for a large apartment complex. The business owners discovered that rental receipt records did not match bank deposits. Further investigation revealed Morgan had been accepting money orders from tenants in payment for rent and depositing the money orders in her own bank account. She altered business records to hide her theft. Although the business only analyzed two years of records, other evidence indicated Morgan had been using her position to steal from the business for many years. Defendant was convicted of Attempted Money Laundering and was sentenced to two years in DOC and was ordered to pay \$75,262 in restitution.

**State v. Lashley:** Defendant was an office manager for a medical supply company. She used company credit cards and funds to pay personal expenses and hid those expenditures from the business owners. Lashley was convicted of Fraudulent Schemes and Artifices, followed by seven years probation. As a condition of probation, she was required to serve 60 consecutive weekends in jail and to perform 1,200 hours of community service. She was also ordered to pay \$119,675 in restitution.

**State v. Murphy:** From July 2005 through December 2012 in his fiduciary position at Morgan Stanley, James Murphy embezzled funds from the non-profit charitable trust of the Elizabeth Ann Parkman Foundation. Murphy diverted the Foundation's charitable contributions to his personal expenses and to organizations not approved by the Foundation, but chaired by Murphy. The contributions were represented by him as an effort to improve his reputation and position within the community. SIS agents executed search warrants at his business and home in April 2013. The prosecution negotiated a pre-indictment Theft plea which was entered in August 2013 requiring full restitution of \$115,032 to the Foundation and a fine of \$25,000. In addition to complete restitution, the defendant faces a possible prison sentence of two to 8.75 years and must serve no fewer than 750 hours of community service. The defendant has relinquished his license to practice as a financial advisor and is restricted from reapplying or attempting reinstatement as a financial advisor or serving in any future trustee or fiduciary capacity. Sentencing is pending in September 2014.

**State v. Alvarado, et al.:** An investigation conducted by DEA resulted in the conviction of a married couple, Juan Alvarado-Fajardo and Neria Morin-Alvarado, for offenses related to their drug trafficking operation. Juan Alvarado-Fajardo had been a major target of local and federal agencies in Sierra Vista, Arizona for the last decade. In 2013, it was determined that a money laundering investigation would be more productive uncovering the illegal activities of this family than a traditional drug investigation. This investigation revealed that the Alvarados were laundering proceeds of drug trafficking activities by purchasing various properties in the Sierra Vista area. When search warrants were conducted, the Alvarados had over \$130,000 cash, 10 vehicles and 11 real properties. The Alvarados forfeited eight of the vehicles and 10 of the properties as well as all the cash. Juan Alvarado-Fajardo was sentenced to 3.5 years in DOC and Neria was sentenced to five years probation.



**State v. Sanchez-Arvizu, et al.:** A money laundering investigation into a group suspected of trafficking drugs through Arizona resulted in the indictment of 13 individuals. This organization was involved in the laundering of drug trafficking proceeds through various bank accounts and a local Tucson, Arizona casino. From approximately June 2010 through May 2013, this group laundered approximately \$1.6 million dollars. This investigation also discovered at least one method that this group was utilizing to ship marijuana. In October 2013, law enforcement intercepted an 84 pound load of marijuana that was commercial shipped to the east

coast. Through the service of a search warrant, investigators learned that the defendants split open a Husky 60 Gallon Air Compressor, filled it with marijuana, resealed and painted it. The shipment was delivered to New York where it was intercepted by law enforcement at the home of the intended recipient. The head of this organization, Maria Yvette Sanchez-Arvizu, is responsible for laundering over \$750,000 just in her personal money laundering efforts. This prosecution is ongoing, the defendants are presumed innocent until proven guilty.



**State v. Guerrero, et al.:** SIS conducted an investigation into the Guerrero family operating out of Douglas, Arizona. This investigation revealed that Jose Jesus Guerrero was responsible for the shipment of marijuana to the east coast and midwest. Proceeds of the drug sales were funneled into bank accounts held by his family member. Deposits of large amounts of cash were made in Rhode Island, Connecticut, Massachusetts, New Jersey, New York, Virginia, New Hampshire, Florida, Pennsylvania, Georgia and Ohio and withdrawn in Arizona by family members and associates. From 2009 through 2012 bank accounts associated with this group of individuals had over \$1.5 million in drug proceeds funneled through them. Various vehicles and other assets were seized from family members as well. One defendant who was engaged in the laundering of drug proceeds was Bernardo Varela, a corrections officer with the Arizona Department of Corrections. Four of the five defendants in this case were convicted of Money Laundering charges and have been sentenced to five years probation. Defendant Jose Guerrero is scheduled for trial in July 2015. This prosecution is ongoing, the defendant is presumed innocent until proven guilty.



**State v. Sanchez, et al.:** In June 2013, DEA began an investigation into the Sanchez family who were operating a drug trafficking and fraudulent credit card ring in Tucson, Arizona. This investigation resulted in the indictment of five individuals. The investigation focused on the bank accounts of the Sanchez family which showed clear indications of structured deposits originating in New York, Maryland and Georgia. In addition, DEA received information that they were also operating a large scale credit card forgery operation. In October 2013, DEA conducted a search warrant on two Sanchez family homes. Bulk marijuana packaged with shipping labels addressed to New York were found. Four other shipment receipts were found for deliveries to New York, Maryland and Georgia. These shipments were intercepted by DEA and bulk marijuana was found in each of the shipments with weights ranging from 40 - 120 pounds. A review of UPS records indicated that the Sanchez family had made over 200 shipments to the east coast within an 18 month period. Also found in the home was over 150 fraudulent credit cards, credit card printer, card embosser, card tipper and a card reader/writer. In addition, forfeiture action has been filed against various assets including a home and various high end vehicles. This prosecution is ongoing, the defendants are presumed innocent until proven guilty.



**State v. Morgan et al.:** Law enforcement proactively targeted a large-scale marijuana and cocaine trafficking organization smuggling illegal drugs into the United States through Nogales, Arizona and transporting them through Tucson for temporary storage in Phoenix before later distributing elsewhere. Over 19 kilograms of cocaine and 2,952 pounds of marijuana with an approximate street value in excess of \$2 million dollars was attributed to this organization. The defendants were charged with Conspiracy, Illegally Conducting an Enterprise and Transportation of Marijuana for Sale. After numerous plea agreements, four defendants were tried and convicted in September 2013 on all charges. Sentencing is pending as all defendants currently are fugitives.

**State v. Wingate:** Joseph Wingate owns Wingate Adult Care Home where 92 year old Nancy Richards lived. Wingate obtained a Power of Attorney, placed himself in control of all of the victim's finances and systematically stole approximately \$82,000 from her. He also had a new will and trust documents drafted for the victim. Wingate was convicted of Theft from a Vulnerable Adult and was sentenced to 14 days in jail, followed by three years probation and was ordered to complete 1,000 hours of community service. He was also ordered to pay \$99,274 in restitution. He also lost his nursing license.

## **VII. 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 provides legal advice and training statewide on issues involving search and seizure, Arizona's drug laws, legal and procedural requirements of wiretaps and courtroom testimony.

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

DRG charged 293 new criminal defendants and was involved in seven wire interception investigations which resulted in 28 indictments, charging 107 defendants. DRG also obtained \$2,475,214 in court ordered fines and \$105,717 in restitution.

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

**CWT 446:** This wiretap investigation began in July 2013 with agents from DEA and Tempe Police Department targeting a drug trafficking organization responsible for the importation of substantial quantities of methamphetamine and cocaine into Arizona from Mexico. Since the inception of the investigation, DRG has sought and obtained authorization to intercept 75 telephones and investigators have served numerous search warrants and have conducted many traffic stops. To date, investigators have seized \$4.4 million dollars in drug proceeds, 288 pounds of methamphetamine and 25 pounds of cocaine that has resulted in the filing of eight indictments charging approximately 20 defendants with numerous drug trafficking offenses. This prosecution is ongoing, the defendants are presumed innocent until proven guilty.

**CWT 396:** In October 2011, 64 defendants were indicted for drug trafficking offenses related to their involvement with a crack distribution ring operating in Phoenix, Arizona. From October 2011 until March 2014, DRG negotiated plea agreements with over 55 of the defendants. In March 2014, after a four week jury trial, David Leary was convicted of all charges and sentenced to 9.25 years in DOC.

**CWT 440:** This operation was initiated in December 2012 by the HIDTA MCDUST taskforce and targeted a Mexico-based drug trafficking organization (DTO) responsible for the importation and distribution of methamphetamine and cocaine to Phoenix, Arizona. During this investigation, 1.3 pounds of heroin, 6.7 kilograms of cocaine, 78.8 pounds of methamphetamine was seized and approximately \$891,000 in drug proceeds were recovered. As a result of this investigation, the State filed 10 indictments against 22 defendants. Between June 2013 and July 2014, all pending defendants resolved their cases with plea agreements, many of which required lengthy DOC terms for the highest ranking members of the DTO.

**State v. Miel:** In October 2012, officers from the HIDTA Taskforce executed a search warrant at a home in Phoenix, Arizona where they located and dismantled a methamphetamine lab. Officers found chemicals, equipment and materials to manufacture methamphetamine in the house, garage and several camper trailers on the property. The methamphetamine produced at the lab was being mailed to the Midwest. Police also found numerous homemade booby traps around the perimeter of the yard, such as nail and

spike boards and electrical wires attached to the metal fence. Terry Miel was convicted of Manufacturing of a Dangerous Drug and Misconduct Involving Weapons and was sentenced to 10 years in DOC and ordered to pay \$10,980 in fines.



**State v. Gajkowski, et al:** Following a December 2013 traffic stop in which several thousand ecstasy pills were found, police from DPS successfully investigated and dismantled a Tempe-based ecstasy production enterprise. Police located and dismantled the ecstasy production operation located in an apartment adjacent to Arizona State University's main campus. This apartment had enough pill material to produce thousands of ecstasy pills and two automated pill press machines. Upon conviction, Andrew Gajkowski was sentenced to one year in DOC followed by three years supervised probation.



**State v. Aispuro-Lopez, et al:** In April 2013, HSI executed a search warrant at a drug stash house in Phoenix, Arizona. HSI had been surveilling the house for several months and suspected that a drug trafficking organization was using the home to store marijuana after it was transported through the southern Arizona desert. Police found over 1,500 pounds of marijuana, numerous firearms and methamphetamine in the house. Based on the location of the marijuana and the paraphernalia, police believed that this home was where the marijuana was being repackaged. The stash house was a major warehouse location for a drug smuggling organization. Aispuro-Lopez was convicted of Possession of Marijuana for Sale, over Threshold and Misconduct Involving Weapons and was sentenced to four years in DOC. Maria Luisa Sanchez was convicted of Solicitation to Commit Possession of Marijuana for Sale and Possession of a Dangerous Drugs and was sentenced to three years probation and ordered to pay \$3,660 in fines.



**State v. Jean:** In June 2014, DRG finally concluded the case against drug trafficker Emilio Jean. The defendant was indicted in February 2010 after he was caught in a cloned Swift tractor trailer which was pulling a stolen Swift trailer filled with 2,114 pounds of marijuana. The litigation was hard fought as the defendant was represented by six different defense attorneys from 2010 through 2014 which involved at least ten substantive motions, two indictments and a challenged extradition. The three week jury trial was held in Coconino County, Arizona in March 2014. Jean was convicted of all counts and the jury found that the State had proven both alleged aggravating factors beyond a reasonable doubt. He was sentenced to 10 years in DOC.



**CWT 448:** This wiretap investigation targeting Raul Zarate-Padilla, who was suspected of coordinating loads of cocaine and drug proceeds between Arizona and the East Coast was initiated in September 2013 by the HIDTA MCDUST Taskforce. During the course of the investigation, Zarate-Padilla attempted to set up a cocaine shipment on behalf of another individual, but was ultimately unsuccessful. However, the investigation resulted in law enforcement discovering that many of his assets were acquired through illegal drug trafficking. This knowledge ultimately led to the seizure of nearly \$2 million dollars of Zarate-Padilla's illegally obtained assets.



**CWT 453:** This wiretap investigation was initiated in February 2014 by the HIDTA MCDUST Taskforce. It targeted an individual who was supplying methamphetamine to customers in Phoenix, Arizona. During the course of the investigation, law enforcement was able to identify several subjects who received large amounts of methamphetamine from the target. Law enforcement seized several pounds of methamphetamine from these individuals. This investigation led to the indictment of six people. This prosecution is ongoing, the defendants are presumed innocent until proven guilty.

**State v. Pena, et al.:** In May 2014, a DPS highway interdiction officer stopped a commercial truck loaded with several vehicles. He noted that one of the vehicles appeared to have a hidden compartment built into it. He searched the compartment and located over \$200,000 in cash. The vehicle was then delivered to its intended recipients as officers followed them back to a residence, where a search warrant was executed and over 12 pounds of methamphetamine was found. Marysol Pena and Alonso Alvarez were charged with Conspiracy, Money Laundering, Possession of a Dangerous Drug and Misconduct Involving Weapons. This prosecution is ongoing, the defendants are presumed innocent until proven guilty.



**State v. Medina, et al.:** In July 2013, DPS detectives were conducting surveillance of several residences in Phoenix, Arizona in order to assist Utah investigators that were conducting a wiretap investigation. Detectives observed a suspect leave one of the residences in a vehicle with an attached trailer. The suspect was followed to West Jordan City, Utah, where approximately 14 pounds of heroin was found hidden inside the axles of the trailer. Based on intercepted calls, DPS detectives executed search warrants at the involved residences. Inside one home, officers seized approximately 60 pounds of heroin and \$70,000 in cash. A trailer found in the garage had approximately \$111,000 in cash in the axles. Pedro Zazueta Medina and Francisco Rivera Nuevo were convicted of Possession of Narcotic Drug for Sale and were each sentenced to three years in DOC. Victor Orozco was convicted of Conspiracy to Commit Sale or Transportation of a Narcotic Drug and was sentenced to three years in DOC. In addition, the cash was forfeited to the State.

**State v. Tavizon, et al.:** In January 2014, Phoenix Police Department went to a home in Phoenix, Arizona in an attempt to determine whether it might be a "stash" house. Inside the residence, officers located two open coolers containing a brown liquid. Officers believed the liquid was methamphetamine in the process of being "glassed" or converted into crystal form. In the master bedroom, officers located methamphetamine in plastic containers that had already been through the glassing process. In total, approximately 28 pounds of methamphetamine was recovered. Approximately one pound of heroin was also seized. In February 2014, Angulo-Garcia and Tavizon-Dominguez were convicted of Conspiracy, Possession of Dangerous Drugs for Sale, Possession of Chemicals or Equipment, or Both, for the Purpose of Manufacturing a Dangerous Drug and Possession of a Narcotic Drug for Sale. This prosecution is ongoing, the defendants are presumed innocent until proven guilty.



**CWT 435:** Phoenix Police Department and DEA requested the assistance of the AGO with a wiretap investigation into a drug trafficking organization that was believed to be smuggling heroin, cocaine and methamphetamine in trailers towed by semi-trucks through Phoenix, Arizona. Investigators received court authorization for the wiretap in December 2012 and intercepted communications of the organization through March 2013. During the investigation, officers seized approximately 46 pounds of methamphetamine, 18 pounds of heroin and approximately \$300,000 in cash. In August 2013, 27 defendants were indicted on various drug charges. While there are outstanding warrants related to many defendants, thus far eight defendants were convicted of crimes involving Conspiracy to Commit Possession of Dangerous Drugs for Sale, Possession of a Narcotic Drugs for Sale and Conspiracy to Commit Money Laundering and their sentences range from probation to five years in DOC. The cash was seized and forfeited to the State.



**State v. Western Union:** In January 2014, the AGO entered into an Amended Settlement Agreement with Western Union to delay continued litigation and ensure that Western Union implements a state-of-the-art Anti-Money Laundering Program. As part of this agreement, all of Western Union's data concerning money transactions for the entire country of Mexico will be given to the AGO. This will enable law enforcement officers to find and prosecute those involved in money laundering in support of the drug trade. The Amended Agreement builds on an earlier agreement executed by the parties in February

2010 which resolved the State's claim that money laundering activities had occurred at Western Union businesses statewide. This agreement requires Western Union to implement 91 Recommendations for its Anti-Money Laundering Program pursuant to an Agreed Action Plan. That plan sets forth with specificity a path for the successful implementation of those Recommendations. An independent and court appointed Monitor will oversee this process. Western Union will provide the State with significant transactional data. Western Union and the State agreed to create the TRAC previously discussed above.

## VIII. Financial Remedies Section (FRS):

Mike Dailey, Section Chief



FRS disrupts and dismantles criminal organizations by investigating and prosecuting racketeering lawsuits that give rise to the remedy of forfeiture. The scope of FRS cases are wide-ranging and include the trafficking of dangerous drugs, money laundering, theft, the sale of counterfeit merchandise, securities fraud, human smuggling, illegal gambling, the sale and distribution of prescription and misbranded drugs and food stamp fraud. Working with federal, state and local law enforcement partners, FRS seizes a wide-range of real and personal property, manages the seized property and distributes the proceeds of forfeited and sold property to victims and law enforcement agencies to investigate and prosecute more racketeering offenses committed by other criminal organizations. Asset forfeiture deprives criminals of the property and profit that keep them in business and alleviate the negative impact that racketeering has on legitimate Arizona commerce.

### i. Overview of Accomplishments:

During FY14, FRS filed 217 forfeiture actions against 2,372 defendants (individuals and seized property) and obtained 26 seizure warrants resulting in the seizure of \$7.7 million dollars worth of assets. FRS successfully concluded 298 cases and obtained final judgments that forfeited over \$18 million dollars worth of assets. As a result, FRS distributed over \$12 million dollars to crime victims, law enforcement agencies and the State of Arizona. Apart from complex civil litigation and property management, FRS attorneys also conducted 55 forfeiture trainings for 799 law enforcement agents throughout the State.

### ii. Major Cases:

**State v. Alarcon:** FRS initiated a forfeiture case against a large drug trafficking and money laundering enterprise investigated by DEA and Tempe Police Department. FRS obtained three seizure warrants and seized \$98,020 from 21 bank accounts used by the defendants to launder drug proceeds in Arizona and Texas. Two Mexican residents filed a claim for the \$67,845 seized from one of the accounts. They claimed that they operated a Mexico-based marble, ball bearing and water pump business and the funds seized were derived from legitimate business. The peso broker, working with drug trafficking cartels, then arranged to have United States currency deposited into the claimants' bank account in Phoenix, Arizona and El Paso, Texas. Some of the deposits were traceable to drug transactions and were made in amounts below the \$10,000 reporting requirement. In May 2014, FRS presented the case at a bench trial and obtained a judgment in favor of the State. FRS forfeited all of the seized funds in the case and case agents were able to educate the court about significant money laundering issues and techniques.

**State v. K & S Convenience Store:** An investigation between October 2005 through the present by the United States Department of Agriculture Inspector General's Office (USDA OIG) and Phoenix Police Department uncovered a fraudulent scheme that took advantage of the Supplemental Nutrition Assistance Program (SNAP). The owners of K&S Convenience Store had been engaged in illegally purchasing SNAP benefit cards issued by the program. The cards were purchased from program beneficiaries at a significant discount and then used by the owners to pay for fraudulent purchases at K & S Convenience Store or to make other purchases for their own benefit. FRS obtained a seizure warrant that enabled investigators to recover over \$700,000 in illegal proceeds. A judgment was entered in January 2014 forfeiting the proceeds which will be reimbursed to the SNAP program and will fund future SNAP fraud investigations.

**State v. Dr. Albert Yeh:** This case arose from prescription drugs illegally prescribed by Dr. Yeh to patients in violation of federal drug laws. He also submitted fraudulent requests for payment for services to private insurers and AHCCCS arising from purported treatment of patients. He also illegally dispensed controlled substances. Yeh was ordered to forfeit \$1.7 million dollars and Uptown Drug was ordered to forfeit \$150,000, prohibiting future such conduct under penalty of license revocation.

**In the Matter of \$1,875,180:** In April 2014 DPS conducted a traffic stop of a commercial vehicle on Interstate 17. Following a consent search of the vehicle, the officer discovered \$1,875,180 in vacuum-sealed cash hidden behind a false wall. The cash was ultimately ordered forfeited to the State and proceeds distributed to the law enforcement agencies involved.



**State v. Padilla:** FRS worked with the DEA to take down a DTO following a wiretap investigation initiated by DRG. Multiple seizure and search warrants were obtained and executed. The State seized the residence and business condominium purchased by Raul Zarate-Padilla, a nationwide drug trafficker. FRS also seized two weapons, five vehicles, \$97,649 in cash, approximately \$60,000 from multiple bank accounts and numerous high-end electronics and household furnishings. The drug trafficker managed and raced two championship-caliber race horses. In lieu of seizing the horses, FRS has seized over \$150,000 in prize winnings. The case is ongoing.



**State v. IQ Vending:** The Arizona Department of Gaming and FRS investigated Prize Redemption devices operated by an Arizona company. The illegal gambling devices were located in malls, gas stations and movie theaters which included names like “Key Master” and “Barber Cut Light.” They offered high-value electronics and prizes such as Apple® iPads®, iPods® and Xbox 360® gaming systems and charged approximately \$1 to \$2.50 per play. The investigation revealed that the devices were tampered with to require a set number of losses before a player would be given an opportunity to use skill to try to win a prize. FRS seized the devices, hundreds of prizes, cash, bank account proceeds and other property totaling approximately \$101,000. In April 2014, FRS obtained a judgment forfeiting a cargo van, money and prizes. This case is believed to be the first investigation and prosecution of the prize redemption devices by a federal or state law enforcement agency in the country. The success of the FRS forfeiture action and related criminal prosecution by FSP exemplifies the strong working relationship between the Department of Gaming and AGO.

### **III. Initiatives:**

**Human Trafficking:** FRS participated in the creation of the state-wide human trafficking taskforce known as Arizona Coalition Against Human Trafficking (AzCAHT) to better investigate and prosecute human trafficking related to both forced sex and labor. AzCAHT prepared and submitted a grant application to Health and Human Services to obtain funding for continued expansion of community education and outreach to local professionals, law enforcement, prosecutors and non-governmental organizations or entities that may encounter victims of trafficking.

**Nationwide Funnel Account Project:** FRS recently assumed a major role in a nationwide effort lead by the Department of Homeland Security, ICE and HSI to combat the use of interstate funnel accounts used by drug trafficking and human smuggling organizations to launder illicit proceeds. The money transmission scheme involves cash deposits made at multiple branches throughout the country into accounts opened along the Southwest border, a known human and drug smuggling corridor. Funnel accounts are used by criminal enterprises to facilitate the deposit, withdrawal and/or transfer of illegal drug proceeds from one geographical area to another in a manner calculated to frustrate and avoid law enforcement scrutiny and in an attempt to introduce the proceeds into the legitimate financial system. The deposits are structured in amounts below \$10,000 to avoid federal reporting and identification requirements. Withdrawals of the proceeds are rapidly made allowing the criminal enterprises quick access to the fund. For this project, HSI identified approximately 2,000 suspected Arizona funnel bank accounts. FRS recently procured three seizure warrants targeting 200 accounts used to launder millions of dollars in suspected proceeds, with several more planned in the future. This project is complex and labor-intensive due to the large number of related bank account records, account holder inquiries, claims and the expense involved in investigating the funnel account networks.



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. FSP also focuses on gang related crimes, human smuggling and handles conflict matters from other counties.

**i. Overview of Accomplishments:**

In FY14, FSP opened 930 defendants and resolved 349 defendants. FSP charged 396 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. FSP assisted over 20,615 victims and obtained restitution in excess of \$7,053,991. In addition, FSP managed 27 foreign prosecution matters, many of which are extraditions or are prosecutions of Mexican citizens being tried in Mexico for offenses committed in Arizona.

Sections within the Criminal Division are also responsible for handling probation violation cases throughout the year. This fiscal year 82 defendants were prosecuted for violation of their terms of probation.

**ii. Major Cases:**



**State v. Fortner:** In August 2013, Brian Fortner was sentenced to 14 years in DOC for Sexual Exploitation of a Minor and Dangerous Crime Against Children. A man called the police when he found a duffel bag outside of his home in Peoria, Arizona which contained a wallet, cassette tapes and images depicting children in sexually exploitive actions. A search warrant was obtained and executed at Fortner's home. After initially denying ownership of the duffel bag, he finally confessed that the items were his. Fortner stated that he was interested in 12 and 13 year old girls, but had seen younger girls in the past. In addition to his prison term, Fortner will be required to register as a sex offender upon completion of his sentence.



**State v. Davis:** SIS and the Office of the Auditor General (OAG) investigated a complaint that Jacques Lavar Davis, through his company AT Security, filed false documents with the Arizona Office of Economic Recovery and Arizona Commerce Authority. He stated that AT Security had an active business address in California and had California employees that would be transferring to Arizona in order to qualify for grant funding. AT Security received \$250,000 in grant funds, but it had no active business address or employees in California, which disqualified them from receiving any grant funding. OAG submitted additional charges against Davis arising out of his fraudulent receipt of nearly \$500,000 in moving costs and tenant improvements from Desert Troon Properties, regarding his lease of a 50,000 square-foot office space in Scottsdale, Arizona. Davis allegedly presented the same fraudulent materials to Desert Troon that he presented to the State in an effort to convince Desert Troon that he ran a major operation. The money from the State and Desert Troon were used for Davis' personal and business expenses. In July 2013, he was convicted of Theft and Illegal Control of an Enterprise and was sentenced to 2.5 years in DOC, followed by five years probation. He was also ordered to pay full restitution.

**State v. Clark:** In March 2013, a search warrant was conducted at Christopher Clark's residence where he confessed to possessing child pornography in his computer. A forensic examination of the computer found images and videos that were contraband and illegal. An age assessment was conducted by medical staff at Child Help where it was determined that the images and videos were of children under the age of 15. These images and videos contained children in sexually exploitive acts with adults and animals. In March 2013, Clark was charged with Sexual Exploitation of a Minor and Dangerous Crimes Against Children. He was convicted of Sexual Exploitation of a Minor and Dangerous Crimes against Children and was sentenced to 12 years in DOC. Upon his release, he will be placed on lifetime probation with sex offender registration terms and computer usage terms.

**State v. McGriff:** In November 2007, detectives from Phoenix Police Department's Gang Unit surveilled the residence of Koszhee DeWayne McGriff to serve him with felony warrants. McGriff was seen leaving the residence and Phoenix Police Department detectives conducted a traffic stop. During the stop, a strong odor of Marijuana was detected emanating from the car. When the detectives attempted to arrest McGriff, he resisted and assaulted both detectives. McGriff then fled the scene and Phoenix Police Department called off the pursuit for safety reasons. Based on information from McGriff's relative and the earlier odor from his car, a

search warrant was executed at his home. In July 2014, McGriff was convicted of Possession of Marijuana for Sale and Aggravated Assault on a Police Officer and was sentenced to six years in DOC and was ordered to pay \$9,200 in fines.

**State v. Forney:** In October 2012, the Maricopa County Sheriff's Office (MCSO) investigated several garbage bags a citizen found in a dumpster that contained sketch drawings depicting graphic bondage and sexual activity of young boys. Investigators also found printed pictures of young boys in sexually provocative poses. MCSO located a damaged laptop computer in the garbage. Officers salvaged the hard drive and conducted a computer forensic examination of its content which revealed hundreds of images of young boys. MCSO identified Roger Forney as the owner of the property based upon items found in the dumpster and documents on the computer. In October 2012, MCSO executed a search warrant at Forney's residence where they found another computer with the same kind of images. During an interview, Forney admitted he was sexually attracted to young boys between the ages of 3 and 12. In October 2012 Forney was charged with Sexual Exploitation of a Minor. He was convicted of Sexual Exploitation of a Minor and Dangerous Crimes against Children and was sentenced to 15 years in DOC and upon his release from prison will be placed on lifetime probation with sex offender registration terms and computer usage terms.

**State v. Al-Ibrahim:** Lujayn Al-Ibrahim worked for an insurance company where he learned how subrogation claims were handled. He set up four bank accounts in the names of fake insurance subrogation companies and submitted over 150 false subrogation packets for damages to parked cars. All documentation was fraudulent and the accidents never occurred. Some of the photographs and vehicle identification numbers provided with the false claims came from legitimate claims Al-Ibrahim handled when he was working for the insurance company. He cooperated with investigators and provided information for two other fake subrogation companies he set up, enabling law enforcement to uncover additional false claims and two of four bank accounts. In October 2013, Al-Ibrahim was convicted of Theft and Money Laundering and was sentenced to two years in DOC, followed by three years probation. He was ordered to pay restitution of \$648,729 to 24 different insurance companies for charged and uncharged crimes. This case was concurrently prosecuted with FRS who seized and forfeited \$300,591 which includes the proceeds of gold bars Al-Ibrahim purchased with his ill-gotten gains.

**State v. Malayev:** Evgenia and Edward Malayev submitted four false applications for medical benefits to AHCCCS for themselves and their children. The Malayev's failed to correctly report on the AHCCCS applications their income and the fact that they owned two businesses. In March 2014, the Malayev's were convicted of Theft and each were sentenced to probation and 40 hours of community service. They were also ordered to pay full restitution of \$52,286 to AHCCCS.

**State v. Khav:** Kimsong Khav, owner of Sam's Quick Stop #2, was charged with Fraudulent Schemes and Artifices, Money Laundering, Computer Tampering and Unlawful Use of Food Stamps. Khav was convicted of Fraudulent Schemes and Artifices and Unlawful Use of Food Stamps. He was sentenced to 120 days in jail, followed by seven years supervised probation. He was also ordered to pay \$150,000 in restitution to USDA and a \$5,000 fine.

**State v. Sweis, et al:** Kameel Sweis owned a convenience store from which he trafficked in fraudulently obtained food stamp benefits. Kameel Sweis, his son Kameel Ameer Sweis and his nephew Faday Sweis, were all charged with Fraudulent Schemes and Artifices, Money Laundering, Computer Tampering and Unlawful Use of Food Stamps. Due to his limited role, Faday Sweis was convicted of a misdemeanor and sentenced to one year probation. He and his son were convicted of Fraudulent Schemes and Artifices and Unlawful Use of Food Stamps and were both sentenced to two years of probation. The son also was sentenced to 60 days in jail. Both were ordered to pay \$805,000 in restitution. This case was significant in that some of the funds were recovered during the search warrant (\$32,876 in cash and the key to a private bank vault that held \$550,480 in cash) and seized immediately following search warrants executed simultaneously at the store and the home of the owner.



**State v. McMillan:** David McMillan was charged with Theft and Fraud Schemes and Artifices related to a securities investment fraud case in Mohave County, Arizona. McMillan was convicted of Theft and Fraudulent Schemes and Artifices and was sentenced to three years in DOC, followed by five years of supervised probation. He was also ordered to pay restitution of \$550,000 to the victim. Mohave County does not have “white collar” terms of probation, but the sentencing judge added special terms to McMillan’s probation that are the equivalent of white collar terms.

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

**Stephen Duplissis, Section Chief**



HCFA investigates and prosecutes health care fraud crimes that impact the State's Medicaid program known as AHCCCS. In addition, HCFA investigates allegations of abuse and neglect that take place in healthcare facilities funded by AHCCCS. HCFA also 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 healthcare institutions; the illegal diversion of prescription drugs by healthcare providers and the physical, sexual and emotional abuse of residents being cared for in AHCCCS-funded facilities.

HCFA experienced an increase in case referrals from local and county law enforcement agencies, as well as from the State’s healthcare regulatory agencies. This successful case referral process is exemplified in Tucson where a unique state and local partnership exists. The Tucson Police Department assigned two experienced elder abuse crimes detectives to work at the AGO. As a result of this partnership, those detectives work directly with the prosecutor on a daily basis.

Through the excellent collaborative work of the Tucson Police Department detectives, the Pima County Sheriff’s detectives and HCFA several serious physical abuse and financial exploitation cases continue to be successfully prosecuted. A number of these cases involve the coordinated response of both regulatory agencies and law enforcement partners. This partnership’s mission is to protect the vulnerable population from criminals who have sought employment in the healthcare field.

**i. Overview of Accomplishments:**

HCFA receives allegations or complaints regarding fraud, misuse of funds and patient abuse in the AHCCCS program. A total of 123 new cases were opened for full investigation which consisted of 81 fraud cases and 42 patient abuse/financial exploitation cases. Throughout the year 133 cases were closed of which 56 were the result of disposition by conviction or civil settlement. HCFA charged a total of 61 defendants and 56 defendants were sentenced. HCFA participated in 35 outreach presentations to assist in the detection, investigation and prosecution of crimes committed in the AHCCCS program.

HCFA continues to work collaboratively with federal law enforcement partners including DEA, FBI and 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 healthcare fraud related to prescription drug crimes.

HCFA personnel regularly attend meetings of the AGO Taskforce Against Senior Abuse (TASA), 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 Aging Response Team.

**ii. Major Cases:**

**State v. Berry:** An investigation into allegations that a doctor’s office employee was selling blank prescriptions showed that Wayne Richard Berry illegally sold prescription pain pills. In January 2013, Berry was charged with Possession of Narcotic Drugs for Sale and Possession of Narcotic Drugs for Sale, above the statutory threshold amount. Berry was convicted of Possession of a Narcotic Drug for Sale, above the statutory threshold amount and Possession of a Narcotic Drug for Sale and was sentenced to five years in DOC, followed by three years probation. He was also ordered to pay \$3,500 in restitution/fines/investigative costs.



**State v. Moreno, et al.:** The son of a 93 year old hospice patient suspected abuse when he discovered bruising on his mother; however, the staff could not explain how the bruising occurred. On his own initiative, he set up a surveillance camera in his mother’s room in the assisted living facility. The recordings ran for several days and verified that two employees had repeatedly been physically abusive to the patient. Caregiver Elisa Moreno was observed using a television remote control to punch a victim in the chest and back. Moreno was also observed throwing pillows at the victim’s face. When Moreno was interviewed, she stated that she had “temper and anger

problems.” In July 2013, Moreno was arrested and charged with Vulnerable Adult Abuse. In October 2013, she was convicted of Vulnerable Adult Abuse and was sentenced to 60 days in jail, followed by four years probation. She was also ordered to pay \$4,482 in restitution/fines/investigative costs.



The second caregiver charged in this case was Annuhar Ruiz. Ruiz was observed roughly handling the patient, forcefully removing the victim’s shirt and then shoving the shirt into the patient’s face. In July 2013, Ruiz was arrested and charged with Vulnerable Adult Abuse. In November 2013, Ruiz was convicted of Vulnerable Adult Abuse and was sentenced to four years probation and ordered to pay \$3,482 in restitution/fines/investigative fees.



**State v. Brown, et al.:** In January 2012, HCFA was notified about a prescription drug ring operating in Phoenix, Arizona. The members of the drug ring used prescription forms from a Medicaid certified healthcare provider. Among the six offenders, Jared Brown, Deborah Allison and Jennifer Galvez were sentenced to a year or more in DOC. In October 2012, Brown was charged with 16 drug related offenses. He was convicted of Attempted Acquisition of Narcotic Drug by Fraud and was sentenced to one year in jail, followed by 36 months probation, 300 hours of community service and ordered to pay \$2,400 in restitution/fines/investigative costs. Allison was charged with 84 drug related offenses. In February 2014, she was convicted of Illegally Conducting an Enterprise and was sentenced to three years in DOC and ordered to pay \$1,500 in restitution/fines/investigative costs. Galvez was charged with 15 drug related offenses. She was convicted of Acquisition of Narcotic Drug by Fraud and was sentenced to 3.5 years in DOC and ordered to pay \$1,500 in restitution/fines/investigative costs.



**State v. Leatherman:** Medicaid patient Natasha Leatherman of Prescott, Arizona was suspected of creating false medical records to appear as though she suffered from leukemia. She used this contrived diagnosis to avail herself of drugs and services paid for by Medicaid. It was further alleged that by feigning this illness, she became the recipient of charitable contributions from citizens in her area. AHCCCS paid more than \$10,000 in unnecessary medical expenses due to her fraud scheme. In October 2013, Leatherman was charged with Fraudulent Schemes and Artifices, Forgery, Obtaining Dangerous Drug by Fraud and Obtaining Narcotic Drug by Fraud. In November 2013 she was convicted of Fraudulent Schemes and Artifices and Obtaining Narcotic Drug by Fraud and was sentenced to five years in DOC for Fraudulent Schemes and 3.5 years for Obtaining a Narcotic Drug by Fraud. She was also ordered to pay restitution/fines/investigative costs in the amount of \$3,572 and to reimburse AHCCCS for the services she fraudulently obtained.

**State v. Iniguez:** In April 2013, the Arizona Department of Health Services alleged that Certified Nursing Assistant Magdalena Iniguez (aka Magdalena Rascon), a nursing home employee stole and cashed blank checks belonging to a 103 year old resident of the nursing home. Iniguez admitted she was able to obtain \$10,500 in cash from fraudulently passing checks as well as an additional \$400 by pawning the victim’s rings. In June 2013, Iniguez was charged with 14 theft related charges. In October 2013, she was convicted of Theft and Vulnerable Adult Abuse and was sentenced to 180 days in jail, followed by four years probation and ordered to pay \$16,450 in restitution/fines/investigative costs.

**State v. Berry:** Michael Doyne Berry was alleged to be presenting numerous forged prescriptions to local Flagstaff, Arizona pharmacies for narcotics and dangerous drugs. Berry was using prescriptions from a doctor who practiced out-of-state. In December 2013, Berry was charged with 62 drug related offenses. He was convicted of Attempted Fraudulent Schemes and Artifices with one historical prior felony conviction; Transfer of a Narcotic Drug (Hydrocodone) and Obtaining Narcotic Drug by Fraud (Oxycodone) with one historical prior felony conviction and was sentenced to 7.5 years in DOC, followed by seven years probation. He was also ordered to pay \$2,700 in restitution/fines/investigative costs.

**XI. Office of Victim Services (OVS):**

**Kirstin Flores, Director**

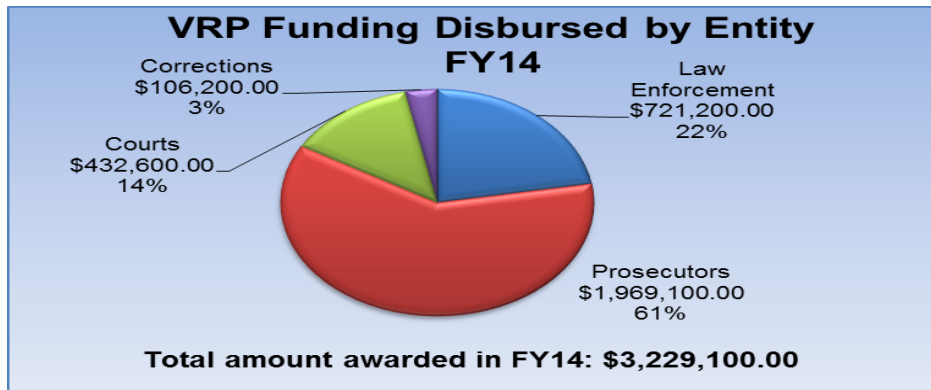


The mission of OVS is to promote and facilitate justice and healing for people affected by crime throughout the State of Arizona. OVS provides a variety of services to victims in AGO cases. In addition, OVS provides financial and technical support to state, county and municipal law enforcement, custodial, prosecutorial and correctional agencies and courts, both adult and juvenile, who have 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 victims in those cases on direct review or under capital appeal. In FY14, advocates provided services to 11,321 victims. Due to the increase in prosecutors at the AGO, an additional advocate position was established.

OVS received and investigated 32 allegations of victims’ rights violations statewide and audited 15 agencies who receive funding from the Victims’ Rights Program (VRP). Grants from the VRP totaling \$3,229,100 were used to support 57 criminal justice agencies statewide. With additional VRP funding approved by the legislature in 2013, an electronic grants management system was built and became optional during FY14. Agency performance reviews and new grant applications were successfully solicited using the new system. It is anticipated that this system will increase efficiencies for both OVS and the 57 funded agencies receiving VRP funds.



To assist agencies with implementing and providing victims’ rights, 45 victims’ rights trainings were provided to 1,142 professionals statewide. The Victims’ Rights Training Program was enhanced to include the full update and/or creation of nine separate training curriculums. Additionally, since its introduction in the middle of FY13, OVS has continued to provide training in victims’ rights to all new hires and interns who work in the Criminal Division and SGO.

OVS played a key role in the passage of two significant victims’ rights related legislative proposals. During FY14 several Arizona death row inmates died while awaiting execution resulting in different appellate outcomes based upon the defendant’s status within the post-conviction process. Pursuant to Arizona case law, the cases of those defendants not on direct review were *abated ab initio*, which means that the case was essentially dismissed from the beginning. Understandably, the families of victims in abated cases were upset and frustrated with the system. After thorough research, OVS, in partnership with the SGO, proposed a statute which would stop the State’s practice of abatement in all criminal cases upon the death of a defendant while under direct review. No other state in the country has this statute. In FY14, A.R.S. §13-106 was created which reads in subsection B: “A convicted defendant’s death does not abate the defendant’s criminal conviction or sentence of imprisonment or any restitution, fine or assessment imposed by the sentencing court.” While the law went into effect too late to help the families of victims in cases which were abated in FY14, the new



law will have a direct effect on victims and families in future cases. Given Arizona's aging prison population, the new law will ensure victim's cases and their restitution orders remain unaffected.

Another proposal amended the victims' rights statutes regarding victims of juvenile offenders receiving the same rights as those victimized by adults.

OVS continues to participate and serve as a statewide leader on victims' issues. An example of this is the yearly recognition of National Victims' Rights Week attended by 330 guests. FY14's event was planned and presented by a collaboration of six agencies: the Arizona Governor's Office, Maricopa County Attorney's Office, Department of Corrections, Department of Juvenile Corrections and the Arizona Prosecuting Attorneys' Advisory Council, in order to recognize individuals in Arizona who have made significant contributions to victims' rights. The Attorney General personally recognized six outstanding individuals.



OVS Staff at the 2014 Victims' Rights Week Recognition Event

### **Major Cases**

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

**State v. Renn:** This case originated as a conflict case from the Maricopa County Attorney's Office (MCAO). The victim in this case worked at MCAO and also had recently worked with the assigned AGO prosecutor. One of the victim's initial concerns was whether her work history with the prosecutor would present a problem. It was determined that a previous working relationship between a victim and a prosecutor was not a conflict. Assisting this victim with her case was trying as the defendant was also the victim's daughter. The victim was trying to balance the need for her daughter to face consequences with her desire to help her overcome her drug addiction. The initial plea was upsetting as the victim was unprepared for a prison term to be a part of the sentence. After conferring with the prosecutor and the victim, the State offered a plea wherein the defendant would be sentenced to jail with the possibility of early release contingent on her acceptance and completion of the Changing Lives Program or another approved in-patient drug rehabilitation program. The victim was relieved that her daughter would be afforded the opportunity to attend the Changing Lives Program. She was extremely relieved and reassured when the new plea terms were presented and accepted.

**State v. Limbrick:** An elderly woman resided in a care facility located in Lakeside, Arizona as she had a series of health issues that required her to receive nursing care. Limbrick was employed as a Certified Nursing Assistant at the facility and stole the victim's debit card and used it without permission. The advocate followed each mailed notice with a phone call in order to explain the information in the letters and answer any of the victim's questions. The prosecutor requested the victim attend the Preliminary Hearing as her testimony was crucial to the case. The advocate coordinated with court personnel to ensure that proper accommodations and security procedures were in place since the victim was wheelchair-bound and required oxygen tanks. The advocate also coordinated with the victim's caseworker for transportation. The advocate and prosecutor traveled to Lakeside, Arizona for the hearing where Limbrick was convicted of Forgery of a Credit Card and was sentenced to three years probation. The victim was not healthy enough to attend the sentencing; however, the advocate helped the victim with a written statement for the judge. The victim added a personal note to the Victim Satisfaction Questionnaire she returned to OVS by mail which stated: "[my advocate] was very professional, always called and followed up in writing. Even though I'm sure some of my questions were rather simple she always answered all of them professionally. [My advocate] is an example of what every 'advocate' should be! I always felt like my case was special!"

## 2014 Distinguished Service Awards

Attorney General Horne presented the following awards to this year's recipients in April 2014 during National Crime Victims' Rights Week:



**Flora Jessop**

Advocate for Victims of the FLDS Community

*2014 Distinguished Service Award – Advocacy/Direct Services*



**Betty Munyon**

Victim Advocate, Mohave County Attorney's Office

*2014 Distinguished Service Award – Service Coordination*



**Roger and Carol Fornoff**

Members, Parents of Murdered Children Inc.

*2014 Distinguished Service Award – Innovative Practices*



**Larry Grubbs**

Program Manager, Crime Victim Services, ACJC

*2014 Distinguished Service Award – Public Policy*



**Connie Chapman**

Director, Arizona Victims' Assistance Academy

*2014 Distinguished Service Award – Leadership*

## **XII. Special Investigations Section (SIS):**

**Andrew Rubalcava, Section Chief**



SIS provides investigative support to prosecutors in the CRM Division as well as to law enforcement agencies throughout the State. SIS consists of 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 trafficking, human smuggling and foreign prosecution and extradition in civil litigation and criminal prosecutions.

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

During FY14, the SIS was able to replace vacancies created by retirements and expanded 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 this year. Special Agents supporting the Fraud and Special Prosecutions Section, Financial Remedies Section, Health Care Fraud and Abuse Section, Consumer Fraud Section and Border Crimes Enforcement 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 and other law enforcement agencies remain at a high level.

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

ii. **Major Cases:**

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

**State v. Husk dba Husk Partners, Inc.:** Gary Husk dba Husk Partners, Inc. was involved in making illegal campaign contributions by using his employees to make personal contributions then reimbursing them through contrived bonuses or false expenses. The case was resolved in a plea agreement in which Husk and Husk Partners, each were convicted of a single misdemeanor.



**State v. Hannah:** In June 2012, the Arizona Secretary of State’s Office provided SIS with certified copies of records from the 2010 general election in both Colorado and Arizona. According to an initial cross-match comparison of voting history records in each of these states, Carol Hannah cast votes in person for the general election in Mohave County, Arizona, on November 2, 2010 and voted by mail on October 18, 2010 in Adams County, Colorado. In May 2014, a trial was conducted and Hannah was convicted of Illegal Voting and was sentenced to probation. She is appealing her conviction.

**State v. Plein:** Kenneth Plein ran a property management company in Sun City, Arizona for twenty years. He convinced people to become hard-money lenders and buy property that was either rented out or “flipped” to a new buyer. The investors were told that their money was secured with a first position lien on the property. When the real estate market collapsed, it was discovered that Plein was running a ponzi scheme, with multiple people being told they had first position liens on properties. There were 98 victims who lost over \$19 million dollars. Plein was arrested in November 2012 and charged with Fraud Schemes & Artifices, Theft, Sale of Unregistered Securities and Transaction by Unregistered Dealer or Salesperson. He was convicted of Fraud Schemes & Artifices and Theft and was sentenced to two years in DOC, followed by seven years probation and he was ordered to pay \$19,851,867 in restitution. At sentencing, he was ordered to immediately surrender \$4,000,000.

**State v. Bocanegra:** Douglas Police Department, Sierra Vista DEA Regional Office and the SIS joined in the investigation of Douglas, Arizona resident Antonia Bocanegra. She was suspected of being involved in either drug or human trafficking activities. This case involved the application of the “Capone Strategy.” The Capone Strategy targets persons believed to be historically involved in illegal activities by defrauding the State by wrongfully accepting public benefits. She defrauded the DES and AHCCCS systems for over \$90,000. As a result of this investigation a search warrant was served on her residence and she subsequently confessed to both the DES and AHCCCS fraud. She also confessed to her long-time involvement in money laundering activities in support of illegal human trafficking activities. However, Bocanegra fled the United States shortly after indictment. Bocanegra was tried in absentia and was convicted of Fraud and Money Laundering. There is a warrant for her arrest should she ever return to the United States. This case also resulted in the forfeiture of her residence and seven vehicles.



**State v. National Bankcard Monitor:** As a result of a consumer fraud action filed against National Bankcard Monitor LLC/Financial Interest Strategies LLC, a consent judgment was reached in August 2013. The agreement ordered \$250,939 to be awarded as

restitution and a permanent injunction prohibiting the defendants from engaging in any future outbound telemarketing sales in Arizona.

**State v. Fletcher's Tire and Auto:** As a result of a consumer fraud action filed against a Gilbert, Arizona Fletcher's Tire and Auto Service Inc., a consent judgment was reached in November 2013. The agreement ordered \$28,000 to be awarded in civil penalties. This settlement resulted from an undercover operation by Special Agents in March 2013.

**State v. JST Merchant Services:** In December 2013, Special Agents were involved in the serving of a temporary restraining order (TRO) against the defendants and their related businesses, which included JST Merchant Services. In conjunction with the TRO, a consumer fraud action alleging numerous violations of the Consumer Fraud Act was also filed. Since August 2012, defendants allegedly defrauded consumers nationwide out of an estimated \$5 million dollars. These schemes involved illegal telemarketing and business opportunity sales which falsely represented earnings to potential consumers to induce them to pay \$10,000 to \$30,000 for advertising leads. In April 2014, a default judgment was entered. The judgment ordered defendants to pay \$250,000 in civil penalties, along with the liquidation of several real estate holdings to provide restitution to consumers. In addition to the judgment, the defendants are prohibited from engaging in any business in Arizona that includes outbound telemarketing for means of generating sales.

**State v. Namaste:** As a result of a consumer fraud action filed against Namaste LLC and other defendants, a consent judgment was reached in April 2014. The agreement orders \$21,688 to be awarded in civil penalties and restitution and prohibits the defendants from engaging in any business in Arizona that includes outbound telemarketing for means of generating sales.



**State v. Rose:** James Rose stole his roommate's identity in order to open student loans and he also forged documents in an attempt to prove to his Probation Officer that he was employed. Rose was convicted of Aggravated Taking the Identity of Another with One Historical Prior Felony Conviction and was sentenced to 5.5 years in DOC and ordered to pay \$8,152 in restitution. Rose was on probation for similar white collar crimes also prosecuted by the AGO and involved the coordination of both Maricopa County Probation and United States Adult Probation. He was also found guilty of probation violation and his probation was extended an additional five years.

**State v. Curry, et al.:** Lester and Kathy Curry ran a property management company in Coolidge, Arizona in which they managed rental properties for out-of-state owners. Lester Curry was embezzling money from the company's trust fund and diverted rent money designated for the property owners for his personal use. He got further and further behind in paying the rental income to property owners. Lester Curry was convicted of Fraudulent Schemes and Artifices and Theft and was sentenced to six months in DOC, followed by five years probation and ordered to pay \$104,340 in restitution to approximately 25 victims. Kathy Curry was convicted of a misdemeanor Theft charge. At least two property owners lost their rental properties in foreclosure because they did not receive the rent monies.

**State v. Ayala:** Kolette Ayala worked at a nursing home in Tucson, Arizona. The wife of a patient at the home where Ayala worked discovered that someone made over \$3,000 in purchases on her husband's credit card without authorization. An investigation revealed that Ayala was captured on store surveillance video making purchases with the patient's stolen credit card. In December 2013, Ayala was charged with two Theft offenses. In February 2014, she was convicted of Solicitation to Commit Theft/Financial Exploitation of a Vulnerable Adult and was sentenced to three years probation and ordered to pay \$3,717 in restitution/fines/investigative costs.

**State v. Perez:** Rosemary Perez was employed as a caregiver for Comfort Keepers in Pima County, Arizona. Perez provided non-medical in-home assistance to an 84 year old double-amputee who was unable to care for herself. The victim's family members reported to law enforcement agents that someone accessed the victim's bank account. Upon further investigation, detectives determined that Perez forged the victim's name on numerous checks totaling over \$7,000. In December 2013, Perez was charged with three Fraud and Theft offenses. In March 2014, she was convicted of Theft and Financial Exploitation of a Vulnerable Adult and was sentenced to two years probation, 100 hours of community service and ordered to pay \$7,091 in restitution/fines/investigative costs.

**State v. Morales:** Adriana Morales was an in-home caregiver employed by an AHCCCS provider in Pima County, Arizona. A detective from the Tucson Police Department noticed suspicious activity at pawn shops by Morales which included 81 transactions in 2013 that had netted payments of over \$15,000. Morales was contacted, she admitted that she had stolen the jewelry from at least 10 patients while employed as a caregiver. In October 2013, Morales was charged with Fraud and Theft offenses. In February 2014, she was convicted of Solicitation to Commit Theft and Financial Exploitation of a Vulnerable Adult and was sentenced to three years probation and ordered to pay \$500 in restitution/fines/investigative costs.

**State v. Superior Marketing Group:** As a result of a consumer fraud action filed against Superior Marketing Group LLC/Streamline Online LLC, a consent judgment was reached in July 2013. The agreement ordered restitution in the sum of \$400,000 and prohibits defendants from engaging in any future advertising or sale of business opportunities.

**State v. UST Development Inc.:** As a result of a consumer fraud action filed against UST Development/David & Cynthia Bell, a default judgment was entered against David Bell in July 2013. The judgment ordered civil penalties in the sum of \$610,000 and permanently prohibits defendant from engaging in any future soliciting of Arizona consumers by mail, telephone or internet.



**State v. Escalante et al.:** This case also involved the application of the “Capone Strategy” discussed in the case above. The Escalante’s, a mid-level DTO, had a long history of illegal activity in Douglas and Tucson, Arizona. This organization was known to smuggle drugs across the border. The joint investigation developed information on members, their considerable assets, financial profiles and criminal histories. Agents obtained search warrants for two residences and one business. Subsequent to the service of these search warrants, civil forfeiture litigation was also initiated. As a result of this case, defendants were convicted of Money Laundering, Theft, Fraud, Conspiracy, and Participating in a Criminal Enterprise. The primary suspect was sentenced to eight years in DOC and the two co-conspirators, with few prior police contacts, each received probation. The civil case resulted in the forfeiture of a 76-acre ranch and home near Douglas, Arizona. Defendants were also ordered to repay for State benefits received fraudulently.

**State v. Alvorado et al.:** In conjunction with the Sierra Vista DEA, SIS assisted in the investigation of the Alvorado Family DTO. This organization was involved in the smuggling of large amounts of marijuana into the United States as well as transportation and sales across the country. The investigative effort identified 12 properties they had acquired over the last several years and several late-model vehicles. Search warrants were served and Investigators located valuable evidence and obtained critical interviews from various family members. In addition, \$100,000 in cash, five vehicles and 10 properties were seized and forfeited to the State. The suspects were sentenced to various terms in DOC.



**State v. Cossin:** SIS assisted the Scottsdale Police Department with a major fraud case involving the theft of Microsoft Computer Software. Jon Cossin, an employee of eBay, created fake e-mail addresses through his work access to e-Bay and PayPal. Cossin used these e-mail addresses to purchase Microsoft products through the Home Use Program for \$10 each and then sold the Microsoft products at a price less than retail. The investigation revealed that from about 2011 to 2012, he sold over \$230,000 in illegally obtained Microsoft Computer Software Programs. Cossin was convicted of Fraudulent Schemes and Artifices and Computer Tampering and was sentenced to one year in DOC, followed by 18 months probation. He was also ordered to pay \$117,377 in restitution to Microsoft and \$8,970 to eBay. In addition, approximately \$380,000 was seized and forfeited to the State.

**State v. Al-Ibrahim et al.:** SIS assisted the Arizona Department of Insurance with an investigation involving the submission of fraudulent automobile insurance claims by Lujayn Al-Ibrahim. Al-Ibrahim was assisted in the fraud scheme by Antenogenes Sanchez. The investigation revealed that Al-Ibrahim submitted approximately \$530,000 in fraudulent automobile insurance claims against several insurance companies. Special Agents served seizure warrants on financial institutions used by Al-Ibrahim to conceal funds obtained in his fraud scheme. One safe deposit box identified in the investigation contained \$18,400 in cash. Information discovered in the investigation proved that Al-Ibrahim had converted some of his ill-gotten gains to gold bars. Pursuant to a plea, Al-Ibrahim forfeited approximately 4.5 pounds of gold bars. Al-Ibrahim was convicted of Theft, Fraud Schemes and Artifices and Money Laundering and was sentenced to two years in DOC, followed by six years probation. Antenogenes Sanchez was convicted of Insurance Fraud and Money Laundering and was sentenced to one year in DOC, followed by four years probation. They were ordered to pay \$669,063 in restitution to the insurance companies.





**State v. Holmes:** SIS assisted the Goodyear Police Department with a major fraud case involving the Arizona School Choice Trust (ASCT). The ASCT is a state-approved School Tuition Organization that exclusively serves low-income children through the administration of three state tax credit scholarship programs: the Individual Tuition Tax Credit Program, the Corporate Tuition Tax Credit Program and Lexie's Law for Disabled and Displaced students. The investigation revealed that the office manager embezzled over \$529,000 from 2011 to 2013, which included multiple check forgeries and the use of credit cards and scholarship funds for personal gain. In May

2014, Marion Holmes was charged Forgery and Theft. This prosecution is ongoing, the defendant is presumed innocent until proven guilty.

**State v. Sweis et al.:** As an ongoing cooperative effort between the United States Department of Agriculture, Department of Economic Security, Phoenix Police Department and the AGO, an investigation related to the unauthorized use of food stamps was initiated against K & S Convenience Store. As previously noted above, this was a SNAP case where defendants defrauded the State of approximately \$939,000 from August 2012 through July 2013. In August 2013, SIS and law enforcement partners conducted search warrants at the Sweis residence as well as K & S Convenience Store where approximately \$713,000 in cash was hidden. Kameel Sweis was convicted of Solicitation of Fraud Schemes & Artifices and Unlawful use of Food Stamps and was sentenced to two years probation. Ameer Sweis was convicted of Unlawful Use of Food Stamps and sentenced to two years probation. Faday Sweis was convicted of a misdemeanor charge of Unlawful Use of Food Stamps and was sentenced to one year probation. Defendants were also ordered to pay \$805,000 in restitution to the United States Department of Agriculture.

#### **Maricopa County Anti-Meth Task Force:**

During FY14, Special Agents assigned to the Maricopa County Anti-Meth Task Force participated in numerous investigations. They participated in the seizure of approximately \$327,000 in cash, 2,840 pounds of marijuana, 30 pounds of methamphetamine, three kilograms of cocaine, 5,000 marijuana plants, one methamphetamine lab, 28 automobiles, 19 weapons and 31 arrests.





TOM HORNE  
ATTORNEY GENERAL

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

THOMAS K. CHENAL  
DIVISION CHIEF COUNSEL

FY2014 ANNUAL REPORT  
APPENDIX C

## 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 2014 include:

- Bringing in a cumulative total of \$2 billion in relief to consumers as a result of the National Mortgage Settlement and related cases,
- Protecting seniors by pursuing telemarketing and business opportunity fraud and expanding the activities of the Task Force Against Senior Abuse,
- Conducting successful undercover operations at auto repair shops to keep businesses honest,
- Preserving competition in the airline industry by challenging the U.S. Airways and American Airlines merger,
- Diligently enforcing the tobacco Master Settlement Agreement,
- Keeping tobacco products and electronic cigarettes away from kids,
- Advising and successfully representing client agencies in a wide variety of financial, real estate, insurance, and environmental cases, and
- Promoting competitive business practices and ensuring compliance with school procurement laws.

In addition to the mortgage cases, the Consumer Protection and Advocacy Section ("CPA") recovered a total of nearly \$138 million<sup>1</sup> in fiscal year 2014, including:

- Diligent enforcement of tobacco Master Settlement Agreement - **\$100 million**

- Consumer restitution judgments obtained in CPA cases - **\$20,985,568**
- Judgments obtained for the State in CPA cases - **\$13,938,227**
- Judgments obtained for CPA client agencies - **\$1,281,269**
- Recovery for consumers in response to written complaints - **\$1,647,052**

## **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 and 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, disgorgement of profits from unlawful practices, and civil penalties.

#### **Enforcing 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. Arizona secured an additional settlement with Bank of America as a result of a separate lawsuit.

In fiscal year 2014, Arizona continued to play a leading role in enforcing the National Mortgage Settlement nationwide. Together with other state and federal agencies serving on the Monitoring Committee, the attorneys imposed new metrics to test the banks’ compliance with the required servicing standards, oversaw Monitor Joe Smith’s compliance reporting, supervised the continuing administration of foreclosed borrower payments, obtained commitments from the banks to improve loss mitigation procedures even beyond the settlement requirements, and ensured that servicers purchasing a significant portion of loans from the banks subject to the settlement complied with its requirements.

Cumulatively, the National Mortgage Settlement and Arizona’s separate settlement with Bank of America have brought the following benefits to Arizona:

- More than \$1.902 billion in consumer relief from the five banks party to the settlement in the form of first and second lien principal reduction, refinancing, and other relief,
- Payments to more than 66,000 Arizonans totaling \$96.5 million to borrowers, who lost their homes to foreclosure by one of the five banks,
- An additional \$7.88 million in principal reduction and other consumer relief, over and above National Mortgage Settlement requirements for severely distressed Bank of America borrowers, and



- \$3.865 million in Hardest Hit Fund benefits paid or approved for Bank of America borrowers who were provided housing counseling assistance as a result of the requirements of the Bank of America settlement.

In addition, the Attorney General continued to maintain a dedicated phone line and e-mail address to assist consumers with mortgage settlement questions throughout 2014 {Phoenix (602) 542-1797; Outside Phoenix (855) 256-2834, [mortgagefraud@azag.gov](mailto:mortgagefraud@azag.gov)}. CLU staff have answered a total of 6,150 consumer phone calls and responded to more than 4,250 mortgage related e-mails since the mortgage settlements were announced in February, 2012.

CLU has also handled hundreds of consumer complaints filed regarding mortgage loan servicing practices in 2014 alone. By escalating these complaints to executive contacts at the banks, CLU is often able to persuade the bank to postpone a pending foreclosure so that loss mitigation options can be reviewed. As just one example, a disabled veteran and his wife filed a complaint regarding their mortgage loan servicer last year. They had an Option adjustable rate mortgage loan and had been paying interest only on the loan since 2005. The couple was seeking a loan modification to obtain a fixed, rather than adjustable, interest rate. Initially, the bank was unmoved. Once CLU became involved, the bank considered various alternatives and ultimately modified the loan so the family received an affordable payment at a fixed interest rate.

### **“Help You Can Trust” mortgage assistance programs**

With the \$57 million in mortgage settlement funds obtained from the National Mortgage settlement and the Bank of America settlement, the Attorney General has developed a comprehensive array of mortgage assistance programs to assist the many Arizonans still struggling from the effects of the financial crisis. In partnership with non-profit organizations with proven track records in the housing, mortgage, legal and social services areas, the “Help You Can Trust” mortgage assistance programs include:

- Mortgage related legal services,
- Housing counseling, financial education, pre-purchase and rental counseling,
- Zero interest, no payment forgivable loans for past due payments, principal reduction, refinance or second mortgage payoff and/or an interest rate reset,
- Relocation funds for those who lost their homes or were evicted within the last 5 years due to foreclosure, or are renting and facing a rent increase that is unaffordable,
- Job training and employment services for homeowners, renters and the homeless who were impacted by foreclosure,
- Help for veterans with service-connected disabilities to pay for accessibility improvements they can’t afford and could put them at risk of foreclosure, and
- A restitution program for consumers who filed complaints with the Attorney General’s Office regarding certain mortgage practices.

These programs have served a collective total of almost 15,000 Arizonans through fiscal year 2014. Further information is available at a website specifically designed to inform the public of the mortgage assistance programs: [www.azmortgageresource.gov](http://www.azmortgageresource.gov).

### **Continuing enforcement actions against mortgage loan servicers**

As an extension of the National Mortgage Settlement, Arizona and other states and federal agencies comprising the Monitoring Committee continued to negotiate similar settlements with other state-chartered mortgage loan servicers. In fiscal year 2014, CLU also secured consent judgments against Ocwen and SunTrust:

- *State v. Ocwen Financial Corporation*: In December, 2013, Arizona and 48 other states filed their complaint against Ocwen and a proposed Consent Judgment in U.S. District Court. The complaint alleged that Ocwen charged unauthorized servicing fees, failed to timely and accurately apply payments, and provided false or misleading information to borrowers. The settlement requires Ocwen to adhere to servicing standards similar to those imposed by the National Mortgage Settlement. The settlement provides for a total of \$125 million in foreclosed borrower payments nationwide, as well as \$2 billion in consumer relief in the form of first lien principal reduction to Ocwen borrowers. Arizona borrowers are expected to receive approximately \$27.5 million in total benefits from this settlement.
- *State v. SunTrust*: The national settlement with SunTrust Bank follows a similar model. SunTrust also allegedly engaged in a variety of deceptive mortgage loan servicing practices. Under the consent judgment, SunTrust is required to implement mortgage loan servicing standards, make a payment of \$50 million, and provide a total of \$500 million in consumer relief to its borrowers nationwide. Arizona is expected to realize a total benefit of more than \$7.9 million from the SunTrust settlement.

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

The CLU continued to prosecute foreclosure rescue and loan modification companies that target vulnerable borrowers this year. Here are a few examples:

- *State v. Maria Elena Alvarez*: This case alleged that Ms. Alvarez falsely represented that she would help homeowners obtain loan modifications, in violation of the Arizona Consumer Fraud Act. Ms. Alvarez allegedly instructed homeowners to stop paying their mortgage loans and give her the money instead, representing that she would pay their mortgages. Ms. Alvarez, however, allegedly kept the funds for her own use, putting the borrowers at risk of foreclosure and negative credit consequences. The consent judgment resolving the lawsuit permanently prohibits Ms. Alvarez from engaging in any type of consumer debt relief services, including mortgage relief, while in Arizona or on behalf of Arizona consumers. She is further required to pay full restitution to consumers who paid her for mortgage modification services. The Department of Financial Institutions also took action against Ms. Alvarez for engaging in unlicensed mortgage loan originator activity and imposed a \$10,000 civil penalty.

- *State v. Stan Allotey, Mortgage Assistance Group*: In this case, Stan Allotey and Mortgage Assistance Group allegedly charged up-front fees for mortgage assistance relief services, in violation of Arizona and federal law. This consumer fraud lawsuit alleged that defendants provided little or no loan modification services to customers (despite charging fees of up to \$3,000), erroneously told consumers to stop paying their mortgages and to stop communicating with their lenders, provided illusory money back guarantees, and failed to provide promised refunds. In 2014, the case was resolved with a consent judgment for \$90,000 entered against Mr. Allotey. CLU also obtained a default judgment against Mortgage Assistance Group for \$380,000. Both judgments bar defendants from conducting any foreclosure consulting business or telephone solicitation sales in Arizona.
- *State v. Robert Hayes*: This was an action taken to enforce a consent judgment CLU previously obtained against Mr. Hayes in 2011. Although the 2011 judgment prohibited Mr. Hayes from engaging in any type of mortgage loan or principal reduction services, CLU learned that he had been working as a mortgage loan officer for a major bank in Arizona. CLU filed a Petition for an Order to Show Cause, requesting the imposition of penalties upon a finding that Mr. Hayes was in contempt of court for violating the 2011 judgment. After the initial court appearance at which all parties and the judge agreed that the only issue was what the amount of penalties should be, the State and Mr. Hayes agreed to amend the Consent Judgment to provide for payment of \$10,000 to provide restitution to consumers who were defrauded as a result of his activities leading up to the 2011 judgment. Mr. Hayes remains under court order to refrain from engaging in mortgage loan or principal reduction services in Arizona.

### **Telemarketing and Business Opportunity Fraud**

Telemarketing and business opportunity fraud are all too common in Arizona, and seniors are too frequently victims. To combat this ongoing problem, the Attorney General successfully backed legislation to regulate the sale of business opportunities in Arizona in 2012. Under the amendments to the Arizona Telephone Solicitations Statute, anyone selling business opportunities must file a registration statement with the Arizona Secretary of State, post a \$100,000 bond, 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. In fiscal year 2014, CLU alleged violations of this and other consumer protection laws in a series of enforcement actions designed to crack down on telemarketers and sellers of business opportunities, including these cases:

- *State v. JST Merchant Services*: CLU filed a consumer fraud and civil racketeering lawsuit against, among others, Jeffrey Hankins, Scott Shocklee, Vyacheslav Yagudayev, Brook Marcus and several companies that they used to allegedly conduct their fraudulent telemarketing scheme, including JST Merchant Services, LLC, Top Choice Merchants, LLC, E-Biz-Services, LLC, and BBS Merchant Group. The suit alleged that the Defendants fraudulently obtained millions of dollars from consumers who were convinced to purchase a website and marketing campaign with which they would advertise JST’s, Top Choice’s, or BBS’s supposed credit card processing services to small businesses, thereby earning substantial commissions from the sale of those services

from their websites. No consumers earned commissions from their business opportunity as no actual credit card processing services were provided by JST, Top Choice and BBS. Many of the consumers who lost thousands of dollars to the Defendants were senior citizens. Defendants also allegedly failed to comply with Arizona's business opportunity fraud law. The case was resolved in 2014 by way of consent judgment and, in the case of Scott Shocklee, an Assurance of Discontinuance. The settlements permanently prohibit the Defendants from engaging in any telephone solicitations from Arizona or to Arizona consumers and from otherwise deriving any income from the marketing or sale of business opportunities. The judgments also require the Defendants to relinquish any claim to frozen accounts in the corporate Defendants' names and, in some cases, to transfer significant personal assets including real estate to the State to be liquidated and used for consumer restitution.

- *State v. Consumer Benefits Research Group*: This was an enforcement action against Consumer Benefits Research Group and its principals for violating a 2011 consumer fraud consent judgment. The 2011 action arose from Consumer Benefits' deceptive telephonic sales of identity theft protection services. No identity theft protection service was actually provided, and the only product provided to consumers was an outdated packet of identity theft information that is available online for free. The 2011 Order contains specific injunctions prohibiting Consumer Benefits and its principals from doing and saying certain things in the sale of identity theft services. Instead of complying, the principals organized two new entities, Active Fraud Solutions and IDMAX, and allegedly used the new entities to violate the injunctive terms of the 2011 Judgment. In 2014, CLU filed an action for contempt action which Defendants agreed to resolve through a Consent Judgment. Under the new Consent Judgment, Defendants are permanently prohibited from engaging in outbound telemarketing; assessed \$100,000 in suspended civil penalties, contingent upon compliance with the injunctive terms; and are required to adhere to a payment plan to pay the balance of the previous judgment.
- *State v. Advanced Media Group*: The defendants in this case operated a business opportunity/telemarketing company through which they sold a number of programs to consumers nationwide for several years. The programs included debt consolidation, mortgage refinancing services, on-line drug prescriptions, group health insurance and travel packages. After selling websites to consumers for a few hundred dollars, defendants would attempt to sell marketing packages for thousands of dollars, claiming that the marketing services were needed to assist in the success of the websites. The complaint alleged that no consumer who purchased a website or advertising services from the company realized income in excess of their costs. The suit alleged violations of Arizona's consumer fraud and telephone solicitation laws and was litigated throughout fiscal year 2014. The parties eventually reached a settlement requiring payments for consumer restitution and restricting future telemarketing activities in Arizona.
- *State v. National Bankcard Monitor*: This consumer fraud action was filed against an Arizona credit card interest rate reduction company allegedly using illegal telemarketing

and misleading sales practices. CLU alleged that National Bankcard Monitor promised to lower consumers' credit card interest rates by negotiating lower rates with their credit card companies, but actually only provided a payment plan showing potential savings if consumers made higher payments to accounts with higher interest rates. The defendant also failed to comply with Arizona's telemarketing laws. The defendant quickly agreed to a consent judgment. The Judgment called for NBM and owner Gino Niccoli to pay over \$250,939.01 to the state. The judgments also permanently bar defendants from owning or operating a telemarketing business.

### **Auto Cases - Undercover Operations and Enforcement Actions**

In 2014, the Attorney General's Office continued to conduct undercover-stings to deter auto repair shops from consumer fraud and filed other important cases involving motor vehicle sales and rentals:

- *State v. Fletcher's Tire and Auto*: The State used its undercover vehicle to perform a "sting" on the Gilbert location of Fletcher's Tire and Auto. The auto repair shop replaced the vehicle's fully operational air conditioning compressor, disregarding the simple and inexpensive repair required. In addition, the State's undercover operator was charged for parts that were not replaced and charged for extended warranties he did not agree to. Diagnostic tests that would have detected the actual problem were never performed. Fletcher's agreed to a Consent Judgment for \$20,000 in civil penalties, \$4,792 in expert costs, \$920.13 in restitution to the State and \$2,553 in costs and attorney's fees to resolve the consumer fraud allegations. The company took corrective action at the Gilbert store where the auto sting took place and agreed to injunctive relief designed to prevent such practices in the future.
- *State v. Saban's Rent-A-Car*: In 2014, CLU filed a consumer fraud lawsuit against Saban's Rent-A-Car based on numerous consumer complaints and the State's undercover investigation. The lawsuit alleges, among other things, that Saban's promises that its rental vehicles will be in good operating condition but consistently delivers vehicles that are in poor operating condition and/or unsafe; that the company blocks out the odometer numbers and engine lights to conceal the poor conditions of its rental vehicles, and that it fails to fairly disclose all rental terms in its advertisements and in interactions with consumers. Litigation is ongoing.
- *State v. Allico, Inc. dba Super Discount Transmissions*: A consumer complaint from a 98 year-old man who took his vehicle to Allico dba Super Discount Transmissions ("Allico") for transmission work triggered this investigation. The consumer was provided with an estimate for a transmission rebuild for \$795.00. After the tear down, Allico called him and told him the price would be \$1,916.00. When he refused the work, they told him it would cost that much just to reassemble his vehicle. He paid for the repair. After his vehicle was examined by the State's expert, it was determined that the shop had charged him for work it did not perform. Allico agreed to the terms of a consumer fraud Consent Judgment that admits it advertised transmission repair at prices that were not honored,

represented to consumers that parts need to be replaced when the parts did not need to be, and claimed to have replaced parts when the parts were not replaced. The Consent Judgment includes various forms of permanent injunctive relief and requires Allico and its principals to pay a combined \$87,512 in restitution, civil penalties, and attorneys' fees and investigative costs.

- *State v. Prieto's Auto Sales, Inc.*: In May 2014, CLU filed suit alleging that Prieto's, a used motor vehicle dealer, willfully engaged in deceptive and unfair acts and practices in violation of the Arizona Consumer Fraud Act as well as the terms of a prior consumer fraud settlement. The lawsuit alleged that Prieto's failed to inspect vehicles and repair hazardous defects, made false promises that defects would be repaired, failed to abide by statutorily mandated warranties, sold trade-in vehicles before the consumer's purchase was completed, sold vehicles for which they did not hold valid title, sold vehicles with salvage titles without disclosing the defect in the title, sold vehicles with hidden collision damage, kept refundable deposits, failed to disclose financing terms properly, knowingly wrote bad refund checks, and failed to follow the statutory requirements for the repossession and disposition of repossessed vehicles. The defendants admitted these allegations in the consent judgment resolving the case. The judgment permanently bars them from engaging in similar conduct in the future and from violating the Consumer Fraud Act. Defendants were also required to pay \$80,000 in civil penalties and \$15,716 in consumer restitution.

## **Health Care Fraud and Pharmaceutical Cases**

The Consumer Litigation Unit continued its participation in several important health care and pharmaceutical cases last year. Among the highlights:

- *State v. McKesson Corporation*: In 2012, CLU filed a consumer fraud lawsuit against McKesson Corporation for manipulating and artificially raising the reported average wholesale prices ("AWP") of hundreds of brand-name drugs. The suit alleged that McKesson raised the spread between the published AWP and the actual acquisition costs in an effort to increase profits for its pharmacy customers and those prices were passed along to all third-party payers. The lawsuit sought injunctive relief, civil penalties, restitution, attorneys' fees and costs. In 2014, CLU reached a settlement with McKesson for \$10.1 million. The settlement funds were designated for consumer restitution, reimbursement for the State's fees and costs, to enhance law enforcement efforts, and for programs to educate consumers about prescription drug pricing and ways to reduce their prescription drug spending, or for other programs intended to rectify violations or alleged violations of consumer protection laws alleged in the complaint.
- *State v. GlaxoSmithKline*: This \$105 million multistate action concerned GlaxoSmithKline's promotions of three drugs: Advair, an asthma drug; and Paxil and Wellbutrin, both anti-depressants. The complaint alleged that GSK misleadingly promoted Advair as a first-line treatment for all asthma patients, including those with mild asthma, although the FDA had only approved the drug for treatment of certain, more

severe asthma conditions. GSK allegedly promoted Paxil as safe and effective for children and adolescents, despite the lack of FDA approval and three GSK clinical trials that failed to demonstrate that Paxil was effective for kids. Wellbutrin was also promoted for a number of unapproved uses. As a result of the settlement, GSK will significantly change the manner in which it compensates its sales representatives, which the states believed contributed to the allegedly unlawful promotion of the drugs. The new program no longer compensates sales representatives on the basis of individual or territory sales numbers, and must be maintained by the company through 2019. GSK also agreed to a number of other requirements designed to ensure that its drugs are promoted only for uses that are scientifically sound and FDA approved.

- *State v. Phusion Projects, LLC*: This case was a multistate enforcement action against Phusion Projects, LLC, the maker of “Four Loko,” a flavored malt beverage. Four Loko originally contained caffeine, but Phusion and other manufacturers were forced to remove the caffeine from their alcoholic products after the FDA issued warning letters in 2010 stating they were adulterated and unsafe. Arizona, together with 19 other states and the City of San Francisco, reached a settlement with Phusion in March, 2014 regulating Phusion’s promotion of non-caffeinated alcoholic beverages. Under the agreement, Phusion is prohibited from, among other things: (1) promoting binge drinking, drinking while driving, or promoting the consumption of alcoholic beverages by means of a rapid ingestion technique or device; (2) selling or offering to sell alcoholic products to underage persons; (3) using names, initials, logos, or mascots of any school, college, university, student organization, sorority, or fraternity in Phusion’s promotional materials for its alcohol products. Additionally, Phusion agreed to monitor its social media postings and to promptly remove from its websites and social media any postings that depict the consumption of its caffeinated alcohol beverages, the mixing of its flavored malt beverages with products containing caffeine, or the misuse of alcohol. Phusion also paid \$400,000.00 to resolve the states’ investigation.

## **General Consumer Fraud Matters**

CLU handles cases concerning a wide variety of business practices, since the Consumer Fraud Act applies to nearly every consumer product, service or transaction. Here are some examples of the diverse cases handled by CLU in 2014:

- *State v. UST Development*: CLU filed a consumer fraud lawsuit against UST Development, Inc., David Bell, and Cynthia Bell for engaging in deceptive mail solicitation practices. Defendants sent out mailers that looked like invoices or bills to businesses and public entities in Arizona for telecommunication maintenance services. The mailing, which appears to be a bill or invoice requesting \$350 or \$425 for services rendered, is actually an attempt to sell a maintenance agreement for telecommunications systems. These mailers charged consumers \$350 or \$425 for services that were allegedly

never authorized or requested by the businesses. The lawsuit sought injunctive relief, consumer restitution, civil penalties and attorney's fees and costs. In July, 2013, the Court entered a Default Judgment against David Bell enjoining him from soliciting Arizona consumers or businesses by mail, telephone, or Internet, operating any business in the State of Arizona which purports to offer services to businesses, and from receiving any monies from any Arizona consumers responding to the mailers. The Judgment also awards the state civil penalties, attorneys' fees and costs in the amount of \$616,334.50.

- *State v. Google, Inc.*: Google allegedly enabled third party advertising "cookies" to be installed on Apple's Safari web browser in circumvention of Safari's default privacy settings, which are meant to prevent such third-party cookies from being installed. It appeared that Google affirmatively facilitates the transmission of these cookies through its coding for the DoubleClick advertising software, and thereby allowed third-party advertisers to collect information about Internet users' web browsing habits without their knowledge and consent. Contrary to its reported practice of circumventing the privacy settings, Google allegedly informed consumers that Safari's default setting blocks all third-party cookies. Arizona and other states reached a \$17 million settlement in this matter in November, 2013. The settlement requires that Google:
  - Not employ certain technologies that use JavaScript to override a browser's cookie-blocking settings without the consumer's consent,
  - Not misrepresent or omit material facts regarding how consumers can use Google's Ads Settings tool or any other Google product, service or tool to directly manage how Google serves advertisements to their browsers,
  - Provide consumers consolidated information about cookies and how they are used, and
  - Maintain systems configured to instruct Safari-brand web browsers to expire the offending cookies.
- *State v. Investmax, LLC*: Defendants operated a telemarketing business under the names Investmax and Marketmax, representing to consumers that they sold stock market investment tools that would provide consumers with specific guidance on how to profitably invest in the stock market, guidance that was purportedly the product of Investmax's and Marketmax's own professional analysts' extensive research and investment expertise. Based on the Defendants' representations, consumers paid Defendants monthly subscription fees ranging from \$149.00 to \$349.00 for newsletters and daily stock picks as well as thousands of dollars for investment training videos. Contrary to the Defendants' representations, the newsletters and videos consisted of little more than general information regarding the stock market, providing no specific guidance on how to make particular, profitable investments. Moreover, the Defendants did not have any expertise or professional experience in stock market investing, nor did they have a team of professional analysts conducting research regarding particular companies



or investments. CLU filed suit and obtained a Consent Judgment against Investmax and related companies and individuals, prohibiting them from engaging in the sale of any type of investment products, services, or advice, and requiring them to pay civil penalties and attorney's fees in the amount of \$5,000.

- *State v. Second Chance Body Armor*: In 2014, CLU resolved this longstanding case related to defective protective gear for law enforcement agencies. The State first filed suit in 2004, alleging that Second Chance committed numerous violations of the Arizona Consumer Fraud Act, arising out of Second Chance's advertisement and sale of soft body armor made with a "Zylon" fiber. Second Chance filed for bankruptcy under Chapter 11, which, in 2005, was converted to a case under Chapter 7. The State's case was stayed for several years for purposes of trying to obtain a global settlement and so that Second Chance could pursue litigation against Toyobo Co., Ltd, the manufacturer of Zylon fiber. After eight years of litigation, the State successfully negotiated a Consent Judgment, which was approved by both the Bankruptcy Court and Maricopa County Superior Court in 2012. Second Chance agreed to pay restitution in the amount of \$3,880,687.83 which was allowed as a general unsecured claim in the bankruptcy, and a civil penalty of \$13,680,000.00, which will be allowed as a general unsecured claim and subordinated for distribution. The Bankruptcy Trustee of Second Chance made all distributions to the Class (and other creditors of the estate). Arizona had approximately 27 class claimants. In addition, Rust Consulting distributed \$260,371.75 to 291 claimants in Arizona in fiscal year 2014.
- *State v. European Vintage Car Company*: European Vintage Car Company and its successor entity, Vintage Only, LLC, allegedly engaged in various forms of consumer fraud in the sale of vintage automobiles. The principal, Frederic Ballot, allegedly made numerous sales misrepresentations, fabricated wire documentation and check mailing documents to try to convince consumers that payments had been made or received when they had not, forged documents such as bills of sale, titles and sales contracts, made agreements to sell cars without authorization of the true owner, received payment for vintage automobiles but failed to deliver them, falsely claimed that vehicles in his possession had been stolen, failed to provide refunds, and co-mingled client, consumer, corporate and personal funds. CLU filed suit alleging numerous violations of the Consumer Fraud Act and requesting consumer restitution, civil penalties, disgorgement of profits, attorneys' fees and investigative costs and court orders banning similar conduct in the future. Litigation is ongoing.

## **II. TASK FORCE AGAINST SENIOR ABUSE**

Since its inception in 2011, 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, Better Business Bureau, Department of Economic Security, Department of Health Services, the Registrar of Contractors, health care organizations, senior

advocacy groups, law enforcement and emergency response agencies, 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.

In 2014, TASA created the “Senior Tool Kit” to protect seniors against financial fraud and exploitation. The Tool Kit addresses common scams directed at seniors, identity theft, credit card fraud, health care fraud, and offers tips to protect seniors from consumer fraud. The Tool Kit also offers suggestions on how to hire non-medical caregivers for seniors and how to protect against elder abuse. Funded by a grant from the Sears Consumer Fund and created with the assistance of TASA’s Advisory Council, the Senior Tool Kit is available on the Attorney General’s website at [www.azag.gov/outreach/seniors/smartseniors](http://www.azag.gov/outreach/seniors/smartseniors).

TASA continued to explore possible legislative solutions to address the problem of unscrupulous non-medical in-home care providers, given that non-medical caregivers are not licensed or regulated by any state or local agency. In 2014, TASA Advisory Board Members further educated legislators about the issue, building on the work from the previous year. TASA continues to analyze and refine legislative proposals aimed at providing transparency about the non-medical caregiver industry and increasing protections for families hiring caregivers.

Based on the advice of the TASA Advisory Council, the Attorney General’s Office stepped up efforts to increase public awareness of the importance of life care planning in 2014. All too often, families confront emergencies where a senior loved one can no longer communicate, yet has not previously left clear direction about end of life matters or who should make medical or financial decision on the senior’s behalf if necessary. That lack of clarity leaves seniors vulnerable, families confused, and health care professionals in a bind. To address the issue, the Outreach Division conducted several presentations promoting life care planning, and the Attorney General’s life care planning packet is now prominently displayed on senior page of the Attorney General’s website ([www.azag.gov/seniors](http://www.azag.gov/seniors)). TASA Advisory Council members also promoted the importance of advance directives, both through networking with fellow professionals and by reaching out to the public through radio programs and other media.

The TASA Helpline received 838 telephone calls involving senior issues in fiscal year 2014. The Helpline assists callers when feasible or directs the callers to offices/agencies that will provide appropriate help. The Attorney General’s Consumer Information and Complaints Unit (“CIC”) assisted many senior consumers throughout the year. Here are a few examples:

- CIC assisted elderly borrowers who were requesting a mortgage loan modification from their bank. Despite the request, the bank set their home for foreclosure. CIC convinced the mortgage loan servicer to postpone the foreclosure. The borrowers eventually obtained the loan modification they initially requested.

- When an 80 year old consumer filed a complaint against a Tucson auto dealer for selling a car with undisclosed add-ons, CIC stepped in. As a result of CIC's efforts, the dealer modified the deal and paid over \$1,000 to resolve the complaint.
- Another senior consumer filed a complaint with CIC regarding a debt consolidation company, who the senior contacted to try to get out of credit card debt. The company transferred payments totaling \$2,180.28 to the company's account, but then deducted so many legal fees that only \$35.00 was left to pay off the consumer's debt. After the consumer filed a complaint with the Attorney General's office, the debt solution company refunded the money.

### **III. CONSUMER INFORMATION AND COMPLAINTS UNIT**

The Attorney General's Consumer Information and Complaint Unit received 14,478 written consumer complaints and answered over 33,550 telephone calls during fiscal year 2014. 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 \$1,647,052 for consumers last year. The major trends of consumer complaints last year are as follows:

Mortgage Companies/ Loan Modification	744
Business Opportunities	567
Telemarketing Fraud	811
Collection Services	601
Services (General)	475
Motor Vehicle (Repairs)	311
Pay Television (Satellite/Cable)	214
On-line and Mail Order Products	190

### **IV. 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 of Financial Institutions in cases against various types of financial institutions and enterprises regulated by the Department, including state-chartered banks, commercial mortgage brokers and bankers, collection agencies, debt management companies, escrow agents, loan originators, consumer lenders and automobile sales finance companies. Agency Unit cases for Department of Financial Institutions in 2014 included:

- *Stuart Allan & Associates*: The Department’s examination of Stuart Allan & Associates (“SAA”), a collection agency, revealed violations of several laws, the most important of which was a trust shortage violation of over \$2,000,000. As a result, the Department initiated proceedings to revoke SAA’s license. Agency Unit attorneys extensively prepared for the revocation hearing and eventually negotiated a resolution of the matter. The Consent Order required new ownership and a change of control over the collection agency, complete replenishment of the trust account, full repayment to SAA clients, and payment of a \$100,000 civil penalty to the Department.
- *In the Matter of ADIR Financial, LLC*: Through an affiliate, Adir Financial advertised as the company who “sends money without money.” An examination conducted by the Department of Financial Institutions revealed that Adir Financial was providing consumer loans in Arizona although it did not hold a consumer lender’s license issued by the Department. The Department issued a Cease and Desist Order for engaging in unlicensed consumer lending activity. Pursuant to a Consent Order, Adir agreed to pay \$100,000 to resolve the matter and to abide by all laws and regulations regulating consumer lenders in Arizona

## **Department of Real Estate**

A primary responsibility of the Department of Real Estate is the licensing and monitoring of real estate salespersons and brokers, and real estate continuing education courses and schools. In addition, the Department administers the Arizona Real Estate Recovery Fund, issues Public Reports, audits property managers, investigates complaints, audits business practices and inspects subdivisions. The Agency Unit provides legal advice and representation in advisory and disciplinary matters, including revocation of licenses and defending the Commissioner’s decision to approve or deny an application to the Arizona Real Estate Recovery Fund. In 2014, the Department continued to focus on property managers and continued to aggressively pursue unlicensed real estate activity. Representative cases include:

- *In the matter of Dawn Anderson and Maricopa Properties, LLC*: The Department of Real Estate issued a Notice of Hearing and Complaint against Ms. Anderson and her entity, Maricopa Properties, LLC based on information regarding misappropriation of trust accounts and other violations arising from misconduct in the property management business. Ms. Anderson failed to respond to the Notice of Hearing and Complaint and failed to appear at the scheduled hearing. The Administrative Law Judge recommended imposition of a \$12,000.00 civil penalty, to be paid jointly and severally by Ms. Anderson and Maricopa Properties, LLC. The Commissioner issued an Order adopting the Judge’s recommendation.
- *In the Matter of the Real Estate Activities of Nick Owens: Strategic Marketing Systems*: Nick Owens, a real estate salesperson, ran a business placing tenants in properties for compensation through unlicensed real estate entities. The Department issued a Cease and Desist Order against Mr. Owens and Strategy Marketing for engaging in unlicensed real

estate activity. After hearing, the Administrative Law Judge recommended that the Cease and Desist Order be upheld, assessment of a \$3000 civil penalty, suspension of Mr. Owens license for 120 days and that Mr. Owens take additional continuing education classes. The Commissioner's Final Order adopted the Judge's findings and penalties, with minor modifications. Mr. Owens filed a Request for Rehearing, which was denied.

## **Department of Insurance**

The Agency Unit provides the Department of Insurance with legal advice and representation in a wide range of matters regarding insurance producer and company licensing. The Agency Unit also provides advice and representation to the Arizona Insurance Guaranty Funds.

One of the many types of insurance providers regulated by the Department are bail bond agents. In *Randolph & Co. Bail Bonds Inc., Tony Ann Randolph, & Kelby Reese Randolph*, the Department filed a Notice of Hearing and Complaint with the Office of Administrative Hearings against Randolph & Co. Bail Bonds Inc., Tony Ann Randolph, and Kelby Reese Randolph (collectively, "Randolph's"). Among other things, the Department alleged that the Randolph's improperly withheld monies received in the course of doing insurance business, failed to return collateral when their obligation was discharged, improperly surrendered arrestees to jail without returning premiums, and failed to abide by Department rules and deliver documents to clients' representatives. Agency Unit attorneys represented the Department in the administrative hearing, which lead the Administrative Law Judge to uphold the Department's notice of violations and to recommend a 12 month license suspension and assessment of a \$2,500 civil penalty. The Randolph's appealed to the Maricopa County Superior Court. After briefing and oral argument, the Superior Court issued a decision ruling in favor of the Department and affirming the Department's Decision and Order.

## **Department of Agriculture**

The Agency Unit represents the Arizona Department of Agriculture, whose mission is to regulate and support Arizona agriculture in a manner that encourages farming, ranching, and agribusiness while protecting consumers and natural resources. The Department oversees the Office of Pest Management, which is a separate state agency that regulates and licenses pest control businesses. The Department also provides assistance to several independent state boards, including the Arizona Leafy Greens Food Safety Committee, the Arizona Grain Research & Promotion Council, the Arizona Iceberg Lettuce Research Council, the Arizona Citrus Research Council, and the Arizona Agricultural Employment Relations Board. The Agency Unit provides general legal advice to the Department and all of the associated state agencies described above as well as legal representation with respect to licensing matters. Agency Unit work includes providing advice on open meeting law, interpreting governing statutes, policies, grants, and contracts, and handling administrative hearings in connection with Office of Pest Management enforcement action. In 2014, Agency Unit attorneys worked closely with staff to prepare several complex rule packages, including a 118 page Notice of Exempt Rulemaking to implement new statutes related to the Office of Pest Management.

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

Agency Unit attorneys are also responsible for providing legal advice and representation to the Game and Fish Department and the five-member, Governor appointed Game and Fish Commission. The Arizona Game and Fish Department is responsible for the management and conservation of all wildlife in Arizona. The Department issues hunting, fishing and trapping licenses, and regulates the take and possession of wildlife. The Department is also responsible for watercraft registration and enforcement of Arizona's boating laws and the laws governing the use of off-highway vehicles. Agency Unit attorneys provide advice on a broad variety of areas including general civil matters, litigation in all levels of State and Federal court, water rights, real property acquisitions, the Endangered Species Act, contracts, procurement, open meeting law issues and rulemaking.

### **V. TOBACCO ENFORCEMENT UNIT**

#### **Successfully Protecting Arizona's Share of Master Settlement Agreement Payments**

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 2014, Arizona received approximately \$100 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 2014.

#### **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 about whether the individual states each "diligently" enforced their tobacco statutes during 2003. 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 a 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. Approximately a dozen non-settling states are challenging the settlement, arguing that it is prohibited by the terms

of the MSA. 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 the 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 an NPM refuses to comply with the Escrow Statute, the TEU initiates litigation to obtain compliance. TEU is also assisting the Arizona Department of Revenue with tobacco tax enforcement issues that relate to and enhance the enforcement of the escrow statute. 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.

TEU also enforces the quarterly escrow deposit requirement, which NPMs must comply with in order to remain listed in the directory.

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

The TEU continues to implement the prohibition on 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 is taking steps to encourage websites and other delivery sellers to not sell into Arizona. TEU is also taking steps to conduct undercover buys on cigarettes online to investigate the delivery of cigarettes and roll your own products into Arizona that are not reported to the Department of Revenue. TEU is also working with the major 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.

### **Implementation of House Bill 2674**

TEU, on behalf of the Attorney General, also successfully advocated for the passage of HB 2674, which is legislation to address the terms of the 2003 NPM Adjustment Settlement, to enhance the enforcement of the Escrow Statute and the Directory Statute, and to enhance the Department of Revenue’s abilities to enforce the tobacco tax laws. As a result of HB 2674, TEU revised all of its tobacco waivers, certifications and bond forms as well as all of the information provided on the tobacco page at azag.gov to reflect the changes to the law. TEU has sent letters to all known interested parties such as distributors and manufacturers, notifying them of the changes to the Directory Statute and Escrow Statute and providing them notice that the bill includes a number of changes to tax statutes that they should discuss with the Department of Revenue. One key

change is the new requirement that, in order to protect against any failure to deposit escrow, all NPMs post a bond in favor of the state in an amount based on the formula provided by statute. TEU has analyzed the applicable data and provided notice to each NPM as to their bond amount. TEU has also established a procedure for determining the bond amounts on a quarterly basis.

### **Youth Tobacco Program**

In 2014, TEU oversaw 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, 520 citations were issued to clerks and businesses found to be in violation of Arizona's youth tobacco law. 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. The TEU continues its recruitment efforts to maintain a steady pool of active youth volunteers.

### **Electronic Cigarettes and Other Tobacco- Related Public Health Activities**

The prohibition on furnishing e-cigarettes to minors went into effect in fiscal year 2014. During 2014, the TEU added e-cigarettes to the list of products that the undercover youths attempt to purchase at retail stores, and these investigations have revealed problems with clerks willing to sell e-cigarettes to minors.

The TEU continued its efforts to increase awareness of tobacco-related public health issues. For example, TEU assisted in the preparation of a National Association of Attorneys General sponsored letter to the Federal Food and Drug Administration (FDA), urging the FDA to regulate e-cigarettes. Subsequent to this letter, the FDA did in fact issues its proposed rules related to regulating e-cigarettes, and the enactment of those rules is pending. TEU also assisted the Attorney General in joining a letter commending CVS Pharmacy for deciding to cease sales of tobacco products and urging other pharmacies to follow suit.

## **VI. ANTITRUST UNIT**

The Antitrust Unit ("ATU") protects competition and consumer welfare in Arizona by enforcing Arizona's antitrust statutes. ATU investigates alleged price fixing, bid rigging and group boycott agreements between competing businesses. ATU also reviews anticompetitive conduct by firms having a significant market share and provides legal advice on antitrust questions to state agencies.

### **US Airways/American Airlines Merger**

In August 2013, the ATU, along with seven other states and territories and the Department of Justice, brought suit to block the merger between U.S. Airways and American Airlines. The Complaint alleged that the proposed merger would substantially reduce competition for commercial air travel in Arizona and other markets, resulting in higher air fares and less service for passengers. In the end, the parties reached a settlement that required the merged airline to



continue operating US Airways' Phoenix hub for the next three years and, for the next five years, to continue serving every airport in Arizona that American Airlines and US Airways served before the merger. The settlement also requires the merging airlines to divest slots (required for take offs and landings) at Reagan National Airport in Washington, DC, and LaGuardia Airport in New York City as well as gates at airports in Boston, Chicago, Dallas-Love Field and Los Angeles. The divestitures are expected spur competition by enabling new carriers to enter those markets and provide additional service for consumers. Additionally, the defendants agreed to pay the States' attorneys' fees and costs.

### **Dynamic Random Access Memory (DRAM) Antitrust Litigation**

Last year, ATU and other states obtained final court approval of a \$310 million nationwide settlement to benefit consumers who purchased electronic devices containing dynamic random access memory ("DRAM"), a common form of memory chip found in computers and other technology devices. The settlement resolves litigation that Arizona and several other states filed in 2006, accusing various DRAM manufacturers of a price fixing conspiracy. Consumers who bought certain types of computers, printers, DVD players, or other devices from 1998 through 2002 may receive restitution to compensate them for the amount they overpaid for these products. A separate settlement resolving claims of Arizona and other governmental agencies requires DRAM manufacturers to implement anti-trust compliance programs, and is expected to provide restitution to those agencies.

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

ATU handled several matters involving school procurement and financing issues in 2014, including these cases:

- *Edu-Prize Schools, LLC*: ATU investigated the Edu-Prize charter schools for improperly soliciting extracurricular activity tax credit donations and spending those donations on ineligible items, such as technology and curricular activities. After suit was filed, a settlement was reached that required Edu-Prize to return \$30,000 to its schools' tax credit accounts, to be used solely for eligible extracurricular activities. The Consent Judgment also requires Edu-Prize to revise its tax credit receipt form, create written guidance for employees on the use of tax credit donations, and perform a yearly audit of its tax credit accounts.
- *State of Arizona v. Rise & Shine Exceptional Services, LLC*: ATU filed suit against Rise & Shine Exceptional Services ("Rise & Shine"), a private school in Maricopa, and its owners Desiree and Timothy Truett for misrepresenting Rise & Shine to parents and to the public as a "non-profit, tuition-free private school" when it was neither non-profit nor tuition-free. The lawsuit alleged that Rise & Shine did charge tuition to parents, many of whom were recipients of Department of Education's Empowerment Scholarship Accounts and used those scholarships to pay the school's tuition. Rise & Shine also allegedly misrepresented the school's financial status in fund-raising pleas. The litigation has since resolved.

## **VII. CONSUMER EDUCATION AND OUTREACH**

CPA continued consumer education and outreach efforts in 2014, working to arm consumers with information they need before scams occur. As part of National Consumer Protection Week 2014, CPA completely revamped the consumer section of the Attorney General's website to provide more information to consumers in a streamlined format. The new web pages feature information on privacy and security issues, auto fraud, telemarketing, money and credit and make it easier than ever for consumers to file complaints. The Attorney General also developed an entirely new website on mortgage issues, [www.azmortgageresource.gov](http://www.azmortgageresource.gov), which provides information about mortgage settlement programs available to assist individuals still struggling from the effects of the financial crisis.

CPA attorneys and staff conducted trainings and outreach to a number of organizations, including the Navajo Nation Human Rights Commission, the Tucson Women's Commission, and the National Association of Federal Employees, as well as to church groups, senior organizations, and at fair housing events.

Last year, the Attorney General's office issued consumer alerts on topics ranging from a medical alert scam, deceptive mailers that appear to come from government agencies, scams that may arise from the Affordable Care Act, and scammers that threaten legal action against businesses that fail to pay bogus utility bills or fake IRS debts. In the coming years, consumer fraud education will remain a priority of CPA. As fraudsters devise increasingly more sophisticated scams, consumers must also enhance their knowledge of ways to better protect themselves against consumer fraud.

## **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 1,405 discrimination charges and resolved 832 cases in FY 2014, including 194 housing charges, 562 employment charges and 76 public accommodations charges. The CRC also issued 12 determinations in cases where the ACRD found reasonable cause to believe that unlawful discrimination had occurred. Six of these cases were successfully conciliated before litigation became necessary, and four remain in conciliation.

The Civil Rights Litigation Section (“CRL”) resolved 86 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 \$6,202,023.94 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 127 civil rights matters and facilitated 68 agreements, which is a 54% settlement rate. As a result of the Conflict Resolution Program’s efforts, charging parties received a total of \$431,594.64 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 wrongful termination based on sex and retaliation, the employer agreed to pay the charging party \$11,000. Before the mediation, the charging party had been unable to secure alternate employment in Arizona, had lost her housing because she was unable to pay rent, and was living out of her car. The settlement money allowed her to relocate to another state where she had secured a well-paying job.
- A housing provider redid modifications to an apartment that aggravated a tenant’s disability, allowing the tenant and her baby to retain their housing.
- Mediation resolved a case involving allegations that an employer terminated his business/human resources manager in retaliation for reporting to him complaints from employees and patients that the employer, a dentist, had sexually harassed them. As a result of mediation, the employer paid the charging party \$60,000 and provided her with

reference letters that permitted the charging party to secure alternate employment in the same industry.

- As a result of several different mediations under the Arizonans with Disabilities Act, the purpose of which is to increase access to the goods and services of businesses and facilities open to the general public,
  - A cab company agreed to provide its services to persons with mobility impairments at the same rate that it provides its services to other customers.
  - A credit union implemented an accessibility policy that provides that it may be necessary to provide sign language interpretation of certain transactions to its deaf customers.
  - A provider of certification programs implemented a policy recognizing that students with disabilities may require accommodations when taking standardized tests.

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 18 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 \$140,089.30 in monetary relief for the Charging Parties and for future monitoring and enforcement activities. The conciliation agreements also resulted in substantial non-monetary relief, such as assuring access for service animals and providing for reasonable accommodations to community rules, policies or practices, to afford persons with disabilities equal opportunity to use and enjoy their homes and the goods and services of places of public accommodation. Finally, the CRL's housing and employment settlements standardly require policy implementation, training, and posting fair housing or equal employment opportunity information to prevent future civil rights violations.

For example, in one case the ACRD determined that the employer, which operates 25 urgent care clinics in Arizona, discriminated against the charging party, a physician's assistant, by failing to provide her with a reasonable accommodation necessary to manage her disability and terminating her employment for alleged performance issues relating to symptoms of her disability. Pursuant to the conciliation agreement, the employer paid the employee \$65,000 and, among other affirmative relief, provided training in the interactive process for identifying reasonable accommodations to its clinical managers, medical directors, area operations managers, and corporate human resources officers working at its clinics throughout Arizona.

In seeking to enforce housing, employment and public accommodations discrimination laws throughout Arizona, the CRL pursued 12 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 \$5,610,340 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:

- *Cooke (State) v. Town of Colorado City, et al.*: On March 20, 2014, the jury returned a unanimous verdict in favor of the State of Arizona on all fair housing claims presented at trial, and awarded the individual plaintiffs, Ronald and Jinjer Cooke, \$5.2 million in damages. In particular, the jury found the Defendants (Town of Colorado City, Arizona; City of Hildale, Utah; Hildale-Colorado City Utilities; Twin City Power; and Twin City Water Authority) to be jointly and severally liable for violating the federal and Arizona fair housing acts by: (1) discriminating against the Cookes in services and facilities, particularly by denying them a culinary water connection for nearly six years, because of religion; and (2) coercing, intimidating, threatening, interfering with, or retaliating against the Cookes in the enjoyment of their dwelling because of religion or because the Cookes asserted rights, or encouraged others to assert their rights, protected by federal and state fair housing laws. The jury also found all Defendants liable for engaging in a pattern or practice of resistance to the full enjoyment of rights granted by the Arizona Fair Housing Act. Following the jury verdict, Defendants at last provided the Cookes a culinary water connection, and after mediation, settled the Cookes' claim for monetary damages as well. The CRL submitted a proposed judgment seeking significant injunctive and affirmative relief to stop Defendants' discriminatory practices and reverse the effect of such practices. The requested injunctive and affirmative relief includes, but is not limited to: disbanding Defendants' police department, which was instrumental in implementing Defendants' religious discrimination; declaring certain municipal ordinances void as pretexts for discrimination; providing new water connections for other individuals who were adversely affected by Defendants' pattern or practice of discrimination; changing discriminatory building permit and utility policies; and having a court-imposed monitor oversee Defendants' housing-related services. The CRL also has requested statutory civil penalties totaling \$250,000 against all Defendants and an award of its reasonable attorneys' fees and costs. The District Court has yet to rule on the proposed form of judgment.
- *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. The matter is set for a six-day trial in Maricopa County Superior Court beginning March 2, 2015.

- *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. ASARCO appealed, and in October 2013, the Ninth Circuit affirmed ASARCO's liability for creating a sexually hostile work environment and the attorneys' fee award but in a separate, for-publication, 2-1 opinion, reduced the punitive damages award to \$125,000. The Court held that \$125,000 was the maximum award consistent with due process under the line of cases following *BMW v. Gore*, in which the U.S. Supreme Court held that in most cases, the ratio of punitive to compensatory damages should not exceed 9 to 1. In December 2013, after the time for the parties to request en banc review had passed, the Ninth Circuit *sua sponte* vacated the punitive damages opinion and asked the parties for briefing on why *en banc* review was appropriate in this case. On June 18, 2014, a Ninth Circuit *en banc* panel heard oral argument, focusing on whether the standard in *BMW v. Gore*, a case arising under state law, applies in a case under Title VII, where Congress has imposed a statutory limit on punitive damages. The parties are awaiting the Ninth Circuit's ruling.
- *State et al. v. The Geo Group, Inc. ("Geo I")*: In this employment discrimination case litigated jointly with the EEOC, plaintiffs alleged that male managers sexually harassed a class of women employees, including primarily correctional officers, and fostered an atmosphere of sexual intimidation and harassment at two prison facilities that Geo operates in Pinal County. At the summary judgment stage, following a then-newly decided Eighth Circuit opinion, *EEOC v. CRST*, the District Court dismissed any class members whom the Agencies had not specifically identified during the administrative investigation and held that the Agencies had not attempted to conciliate in good faith the claims of several class members who had been identified during the investigation and named in the reasonable cause determination. The case was stayed for additional attempts at conciliation, which were unsuccessful. In April 2013, 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, Geo committed to extensive policy changes and training at Geo's Florence West facility, where the charging party and remaining class members worked or had worked. The Agencies have appealed the dismissal of the class members to the Ninth Circuit, completing briefing in July 2014. The Agencies' arguments are consistent with the Seventh Circuit's December 2013 ruling in *Mach Mining LLC v. EEOC*, which disagreed with *CRST* and held that the EEOC's alleged failure to conciliate class members' employment discrimination claims is not an affirmative defense to the

employer's liability. The U.S. Supreme Court accepted *certiori* of the *Mach Mining* decision on June 30, 2014. The Court's decision in *Mach Mining* during the coming term likely will be dispositive of the Geo I appeal.

- *State v. Geo Group, Inc. ("Geo II")*: In March 2013, the CRL initiated litigation on behalf of a class of women employees at Central Arizona Correctional Facility ("CACF"), the other prison that Geo operates in Pinal County, a facility housing sex offenders. Like Geo I, Geo II alleged that a sexually hostile work environment was pervasive at CACF, and indeed the Geo II class included a number of the women who had been dismissed from Geo I. Geo II differed from Geo I, however, in that all women who may have been working at CACF (and thus who may have been aggrieved by its hostile environment) during the relevant statutory period were named in the reasonable cause determination and in the lawsuit that the CRL subsequently filed. Also in contrast to Geo I, in Geo II, the CRL voluntarily amended its complaint to limit the class based on employment records demonstrating who in fact was employed during the relevant period that Geo had withheld during the administrative investigation but was compelled to disclose after the lawsuit was filed. The CRL attempted to conciliate the individual claims of this smaller class of women, and in November 2013, finalized a conciliation agreement resolving Geo II that provided substantial monetary relief to nine class members. The conciliation agreement in Geo II also provided substantially the same remedial measures for CACF that the consent decree in Geo I provided for Florence West.
- *City of Tempe v. Attorney General Tom Horne et al*: In October 2012, the City of Tempe filed a declaratory judgment action in Maricopa County Superior Court seeking a declaration that the Attorney General does not have jurisdiction or authority to investigate Tempe Housing Services ("THS") for an alleged violation of the Arizona Fair Housing Act ("AFHA") in THS's administration of a Section 8 Housing Choice Voucher Program and that the Attorney General's Office abused its discretion when it declined Tempe's request to dismiss a constituent's complaint that THS denied him a housing voucher because of his disability in violation of the AFHA. Following cross-motions for summary judgment, the Superior Court dismissed all of Tempe's claims in December 2013, and in February 2014, awarded the State \$108,090 in attorneys' fees. In July 2014, Tempe appealed the adverse judgment and attorneys' fee award to the Arizona Court of Appeals.

**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 41 of these events throughout the state during the past year.

## Environmental Enforcement Section

### 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 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. EES also successfully briefed the motion for reconsideration to the Court of Appeals decision. Further appeals have been exhausted or waived.
- *State v. Clayton Kuhles*: This is a case brought on behalf of ADEQ regarding closure of the landfill owned by Kuhles Capital Co., LLC. EES secured a default judgment against Clayton Kuhles, individually, for (1) injunctive relief regarding payment of \$59,100 into the financial assurance account established by ADEQ for closure of the landfill; (2) civil penalty of \$25,000 and (3) attorney fees of \$14,556.
- *State v. Dlubak Glass Company*: This is a case brought on behalf of ADEQ against a glass recycling operation in Yuma for lead contamination in the soil. Dlubak agreed to a civil penalty of \$120,000 in three annual installments. Dlubak also has completely excavated the lead-contaminated soil found at its glass recycling operation near Yuma, and has legally disposed of it at the nearby landfill.
- *State v. Pure Wafer, Inc.*: This is a matter on behalf of ADEQ against a computer chip recycler near Prescott for failure to obtain an Air Quality Permit for a number of years for its HAP emissions of hydrogen fluoride. A Consent Judgment was entered, providing for a \$120,000 civil penalty. Pure Wafer also obtained the required Air Quality Permit.

*State v. Penn Racquet Sports*: This is a cost recovery matter in the West Van Buren (“WVB”) Water Quality Assurance Revolving Fund (“WQARF”) Site. The companies, GenCorp, Inc.; HTM USA Holdings Inc.; and Penn Racquet Sports entered into a settlement to reimburse the fund for costs at the Site in the amount of \$30,000.

*State of Arizona vs. Allied Tube & Conduit*: This is a matter on behalf of ADEQ against Allied Tube & Conduit Corporation (“Allied”) to settle allegations that Allied violated Arizona’s Hazardous Waste Management Act and rules adopted pursuant to such. The violations alleged



included disposal of hazardous waste without a permit, failure to keep containers of hazardous waste closed except when adding or removing waste, failure to comply with emergency equipment requirements, and failure to maintain personnel training records on site. A Consent Judgment was entered by Maricopa County Superior Court in February, 2014 and Allied paid the agreed-upon civil penalty of \$130,000.

*State v. Arnett*: This is an Underground Storage Tank (“UST”) enforcement matter brought on behalf of ADEQ. Trial was bifurcated with a liability phase conducted to determine whether Arnett’s affirmative defenses would defeat the State’s claims. After a 3 day bench trial, the court determined that not only did the State’s claims survive, but that Arnett was liable as an owner of the UST. Arnett appealed that decision to the Court of Appeals. Oral argument was held on May 6, 2014. The Court of Appeals delivered its opinion on 22 July 2014 and agreed with the State on all issues.

### **EES IMPACT INFORMATION**

- EES collected \$618,000 in penalties for the State.
- EES collected approximately \$30,000 in reimbursement to the State.
- EES saved the State Assurance Fund approximately \$500,000.

## **Agency Counsel Section**

### **OVERVIEW**

The Agency Counsel Section (“ACS”) represents more state agencies, boards, commissions, elected officials and judicial officers on a greater variety of 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, retirement benefits and inmate parole and clemency. Examples of ACS’ responsibilities include negotiating multi-million dollar contracts, assisting in state bonding issues, providing procurement advice, and assisting agencies with licensing and certification issues, gaming and lottery matters and retirement eligibility issues and advice concerning public records requests and open meetings. Other tasks include prosecuting enforcement actions and defending claims or actions against the agencies, including defense of the constitutionality of legislation and most recently claims against the State in bankruptcy court. 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 many litigation matters, great and small. 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 or protest response drafted by ACS.

### **ACCOMPLISHMENTS**

ACS lawyers conducted a large number of administrative and judicial proceedings on behalf of client agencies during FY 2014. 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.

- Represented the Board of Executive Clemency and the Department of Corrections in defending expedited litigation in both the State and federal courts designed to halt the October 2013 executions of E. Schad and R. Jones and to force disclosure of execution-related information that is confidential by statute.
- Defended a constitutional challenge to the Arizona Supreme Court’s rules concerning the admission of lawyers to practice law based on prior experience in other jurisdictions.
- Defended the State against large attorneys’ fees claims in cases that challenged legislation affecting public retirement systems.
- Provided training to public procurement officers on the topic of laws pertaining to purchasing and contracting not covered by the Arizona Procurement Code, training on the topic of conflict of interest and evidentiary issues for hearing officers and members of the State Board of Equalization, training to juvenile court probation officers regarding confidentiality of court records, 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 several client agencies.

- Assisted its clients in transactional work:
  - Represented the Arizona Water Infrastructure Finance Authority (“WIFA”) when it issued bonds.
  - Assisted the Arizona Department of Corrections (“ADC”) in negotiating and documenting agreements regarding the exercise of an option to purchase of the Marana prison facility.
  - Advised Clerks of Courts, the Department of Administration, the public pension systems and this office concerning marriage-related topics.
  - The Arizona Exposition and State Fair Board is one of the more colorful ACS clients. 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.
- The Section assisted the Arizona Department of Administration and other agencies in procurement work. For example, 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.
- 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 2013 Exercise entailed a simulated dirty bomb explosion in central Phoenix and drew representatives from government entities nationwide.
- Helped to successfully train new Board of Executive Clemency members and a new executive director/chairman. ACS provided representation for the Board after a legal challenge was filed in a death penalty case concerning the composition of the Board and their background and training.



**TOM HORNE**  
ATTORNEY GENERAL

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

**RICHARD RICE**  
DIVISION CHIEF COUNSEL

## **CIVIL DIVISION'S MISSION**

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

## **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.

## **SENIOR LITIGATION COUNSEL**

**Michael Tryon, Sr. Litigation Counsel**  
**David Weinzweig, Sr. Litigation Counsel**  
**Stephanie Elliott, Assistant Attorney General**

### **Major Case Highlights:**

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

This is a lawsuit against the Arizona Board of Cosmetology by the Goldwater Institute on behalf of a licensed cosmetologist. The lawsuit alleged the Board's prohibition on fish pedicures was unconstitutional. After a trial, the trial judge entered judgment that the Board's ban was constitutional. The Goldwater Institute appealed and the Court of Appeals held that the Board's ban on fish pedicures was constitutional. Goldwater has filed a petition for review.

#### ***Magna Legal Services v. Board of Certified Reporters***

This is a lawsuit by a national court reporting firm (Magna) alleging the Board's court reporting regulations were unconstitutional. Magna filed a first amended complaint after a court-mandated meet and confer on proposed Rule 12 motions. Thereafter the Board filed a motion to dismiss the amended complaint. The court denied the motion but stated the complaint barely survived the motion and would probably not survive summary judgment. The court ordered Magna to file a second amended complaint correcting its deficiencies by a date certain. Magna did not file a second amended complaint and the matter was dismissed with prejudice.

## ***Planned Parenthood v. Will Humble***

This is a suit filed in United States District Court in Tucson alleging a state statute restricting the abortion medication protocol to that approved by the FDA is unconstitutional. Planned Parenthood applied for an injunction of the statute pending the trial of the matter. After a hearing United States District Court Judge Bury denied the motion. Planned Parenthood appealed that order to the 9th circuit which ruled in favor of Planned Parenthood. The Director is filing a petition for cert.

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

**Kevin Ray, Section Chief**

### **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 Laboratory. In addition, the Unit also represents the Arizona Commission for the Deaf and Hard of Hearing. The Health Unit has prepared the following outline of activities and accomplishments during the July 1, 2013-June 30, 2014 fiscal year, where it represented ADHS, the ADHS Director, Will Humble, or the State.

#### **Major Accomplishments:**

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

Health Unit attorneys successfully defended the award of the largest mental health contract ever issued in Arizona, overcoming a protest and appeal by Magellan Complete Care of Arizona, Inc., the incumbent contractor. ADHS' award of the new Maricopa County Regional Behavioral Health Authority (RBHA) integrated health care contract to Mercy Maricopa Integrated Care (MMIC) was the first of its kind; it requires MMIC to manage both the physical and mental health needs of the patients covered by the State's public behavioral health system. The contract is for a three year term with 2-one year renewal options available. The total value of the contract is one billion dollars per year, making the total value of the contract from three to five billion dollars. 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.

The Magellan protest hearing process was initiated at the Office of Administrative Hearings, and lasted several months. During that time, the parties engaged in significant pretrial motion practice, conducted an 8 day evidentiary hearing, and submitted written post-trial filings. After the decision in favor of ADHS was issued, Magellan appealed to the Superior Court. After all parties had briefed the appeal, Magellan agreed to dismiss its appeal. The contract is now in full effect with MMIC as the Maricopa County RBHA.

## **Abortion Cases:**

### ***Planned Parenthood of Arizona, et al v. William Humble (Federal Case)***

Planned Parenthood, Dr. William Richardson, and Tucson Women's Center (collectively, "Planned Parenthood") filed a complaint for declaratory judgment and injunctive relief in the federal district court on March 4, 2014, seeking to enjoin new medication abortion restrictions for abortion clinics. Planned Parenthood named Will Humble, Director of ADHS, in his official capacity, as the Defendant. EHS is working with the Solicitor General and Senior Litigation Counsel to defend Director Humble in the various stages of the litigation.

Planned Parenthood challenged the medication abortion restrictions in A.R.S. § 36-449.03(E)(6) and A.A.C. R9-10-1508(G) (collectively, "Arizona law"). Planned Parenthood argues that the Arizona law is unconstitutional because (1) it places an undue burden on women's right to choose abortion; (2) it violates women's bodily integrity; (3) it is impermissibly vague, fails to give adequate notice of the procedures it proscribes, and encourages arbitrary and discriminatory enforcement; and (4) it discriminates between licensed abortion clinics (and their patients) and other health care and abortion providers (and their patients). Planned Parenthood moved for a temporary restraining order or a preliminary injunction; after briefing and argument, the federal district court denied Planned Parenthood's motion. Planned Parenthood then filed an interlocutory appeal in the Ninth Circuit.

Through an emergency motion, Planned Parenthood requested an immediate stay pending additional briefing, which the Ninth Circuit granted. The parties then briefed and argued whether the federal district court should have granted Planned Parenthood's request for a preliminary injunction. In its opinion, the Ninth Circuit applied a new weighing test, which the Court expressly acknowledged put its analysis into conflict with recent medication abortion decisions in the Fifth and Sixth Circuits (*Planned Parenthood of Greater Texas Surgical Health Services v. Abbott*, 748 F.3d 583 (5th Cir. 2014) and *Planned Parenthood Southwest Ohio Region v. DeWine*, 696 F.3d 490 (6th Cir. 2012)). Director Humble will be petitioning the United State Supreme Court for a Writ of Certiorari to address these issues and resolve the split in the Circuits. On July 28, 2014, the Ninth Circuit granted Director Humble's Motion to Stay the Mandate Pending Filing of a Petition for a Writ of Certiorari.

### ***Planned Parenthood of Arizona, et al v. William Humble (State Case)***

Planned Parenthood, Dr. William Richardson, and Tucson Women's Center (collectively, "Planned Parenthood") filed a complaint for declaratory judgment and injunctive relief in the Maricopa County Superior court on April 7, 2014. Planned Parenthood named Will Humble, Director of ADHS, in his official capacity, as the Defendant.

Planned Parenthood has again challenged the medication abortion restrictions in A.R.S. § 36-449.03(E)(6) and A.A.C. R9-10-1508(G) (collectively, "Arizona law") under new legal theories not raised in the Federal Case discussed above. Planned Parenthood argues that the Arizona law is (1) unconstitutional because it delegates legislative authority for the regulation of medication abortions in Arizona to the FDA and drug companies and (2) is unlawful because ADHS did not follow its internal rulemaking procedures as they were stated on its website. EHS is representing Director Humble.

Director Humble moved to stay this case pending resolution of Planned Parenthood's federal case. The Superior Court granted the motion. However, on July 28, 2014, the Court granted Planned

Parenthood's Motion to Reconsider. The parties will move forward with this litigation separate and apart from the Federal Case.

### **Certificate of Necessity Cases:**

The Health Unit is representing ADHS in three Certificate of Necessity (CON) hearings coming up this fall in addition to one Superior Court appeal of a prior CON decision.

***Golden Valley Fire Department*** - Plaintiff, a fire district seeking a CON, brought a Special Action against ADHS' Director Will Humble seeking to enforce A.R.S. § 36-2234. Plaintiff alleged that Director Humble, by holding an administrative evidentiary hearing prior to granting the CON, was not properly fulfilling his statutory duties. Following oral argument on Defendant's Motion to Dismiss, the Superior Court dismissed the Special Action finding that Director Humble was indeed following the statute's intent and directives. The CON case has now been reset by the Office of Administrative Hearing (OAH) for a two week evidentiary hearing starting on October 27, 2014.

***ABC Ambulance*** has appealed the ADHS Director's decision to not issue a CON to ABC. The Superior Court has established briefing schedules for the parties. ABC's Opening Brief is due on September 12 and the briefing schedule concludes on December 17, 2014.

***American Medical Response-Maricopa*** has applied for an initial CON in Maricopa County. A three-week, three-party evidentiary hearing is scheduled at OAH for the weeks of September 15<sup>th</sup>, September 29<sup>th</sup>, and October 14<sup>th</sup>.

***American Medical Response-Pima*** has applied for an initial CON in Pima County. A three-party, two-week evidentiary hearing will be set at OAH; the first week of hearing begins on November 17, 2014.

### **Sexually Violent Person (SVP) Cases:**

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

The Health Unit represents the Arizona Community Protection and Treatment Center (ACPTC) located on the grounds of the State Hospital. A number of individuals who have been found by the Court and were subsequently committed to the ACPTC as an SVP challenged the admissibility of the ACPTC's annual evaluation report and the annual evaluator's testimony at their annual hearings on their petitions for absolute discharge or conditional release to a less restrictive alternative. The SVPs asserted that the methodology used by the annual evaluator was not generally accepted in the scientific community. Last year, Arizona 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 his annual review hearing. Other SVPs joined in this matter.

The Superior Court approached the *Daubert* hearing as an omnibus hearing for a total of 12 individual SVPs and made clear that the ruling would apply to all SVP annual hearings on petitions for absolute discharge or conditional release to a less restrictive alternative. An evidentiary hearing was held in this matter on October 24 and 25, 2013. The ACPTC hired two nationally renowned experts who testified that the methodology used by the ACPTC's annual evaluators was valid and reliable. The Superior Court found that the methodology employed by the ACPTC's annual evaluators met the

*Daubert* standard for reliability. It ruled that the annual evaluation reports were admissible and that the annual evaluator would be permitted to testify at the annual hearings on petitions for absolute discharge or conditional release to a less restrictive alternative.

***Staats v. McMorran* (§ 1983 claim for prospective injunctive relief)**

Plaintiff, a sexually violent person, is committed to the ACPTC. Plaintiff filed an action against State employees and agencies for damages and injunctive relief in federal district court alleging that the ACPTC had unlawfully seized his copy of *Mein Kampf* in violation of his constitutional rights. The court dismissed most defendants, several claims, and the claim for damages, but allowed his claim for prospective injunctive relief on a First Amendment claim to go forward against the Director of the ACPTC. The Director has filed a motion for summary judgment. The plaintiff has not filed a response yet.

***Nickolich v. Arizona State Hospital* (Special Action regarding conditions of treatment and confinement at the ACPTC)**

On April 2, 2013, Plaintiff, a sexually violent person committed to the ACPTC, filed a special action complaint in Maricopa County Superior Court against the State and a number of employees alleging that the ACPTC failed to comply with its statutory duty to provide him with adequate treatment. Plaintiff initially misfiled the case and eventually withdrew the special action. Plaintiff subsequently refiled the same case on May 28, 2013, LC-2013-000291 against various entities (including the ACPTC) and individuals, most of which were then dismissed, leaving ADHS/ACPTC and Director Will Humble. The parties are currently conducting discovery in the special action. Plaintiff has also filed two other lawsuits regarding the same issues and facts. He has filed one case in the Superior Court seeking a temporary restraining order, CV-2014-007334, which the Health Unit had dismissed for failure to state a claim. The other case was filed in the federal district court of Arizona, which is being handled by the Liability Management Section of the AGO.

**Mental Health Cases:**

***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 the Arizona Health Care Cost Containment System (AHCCCS) were 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. The parties agreed to an extension of the end date until July 1, 2010. The Plaintiffs invoked dispute resolution in 2009, arguing that the Defendants failed to implement the Settlement Agreement. Mediation concluded in February, 2011.

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 which began on November 18, 2013, to address the remaining claims advanced by Plaintiffs. Trial was held that week and then scheduled to reconvene



the week of March 24, 2014. During the period between these weeks of trial, the parties continued with discovery and filed numerous briefs to address various evidentiary issues. Shortly before the trial was scheduled to continue, the Plaintiffs agreed to dismiss their case, and on March 21, 2014, the parties filed a Joint Motion to Vacate Hearing and Dismiss Litigation, which the Court granted. After 23 years, this case was brought to a conclusion and relieved the State Defendants from oversight by the Plaintiffs as well as the continual legal fees (including the majority of the fees and costs incurred by Plaintiffs during the pendency of dispute resolution).

### ***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, the 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. The Defendants were never able to meet the Exit Stipulation criteria, which largely hinged on an influx of significant additional funding.

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 was 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.

Negotiations continued through January, 2014, when officials at ADHS, Maricopa County, and the Office of the Governor reached an agreement with Plaintiffs – an exit to the case that began almost 30 years ago. The parties agreed to the terms of and finalized a Stipulation for Providing Community Services and Terminating the litigation. The Stipulation includes an increase of services in four areas: ACT teams, Supportive Housing, Supported Employment and Peer and Family Services. The Stipulation also provides for the use of several independent tools by the parties to evaluate its implementation. Most importantly, if Plaintiffs do not file a motion to enforce the Stipulation, between July 15, 2014 and September 1, 2014, the parties are to file a motion to dismiss the case. The Stipulation does, following dismissal, give the Plaintiffs the right to file a motion with the court enforce the Stipulation (due to an alleged failure by the Defendants to substantially comply with its terms). The parties anticipate filing the motion to dismiss before the September 1, 2014 deadline.

### **Medical Marijuana Cases:**

#### ***Welton v. Arizona***

Welton is a five-year-old medical marijuana patient who filed a complaint for declaratory judgment and injunctive relief in the Maricopa County Superior Court on October 28, 2013, seeking a decision that would allow his continued use of marijuana extracts to control his seizures. Welton named the State of Arizona, Governor Brewer, County Attorney Bill Montgomery, ADHS, and Will Humble, Director of ADHS, in his official capacity, as Defendants. EHS and Senior Litigation Counsel represented the Governor, ADHS and Director Humble (collectively, “State Defendants”).

Welton sought a declaratory judgment that the Arizona Medical Marijuana Act (AMMA) decriminalized the medical use of marijuana extracts and requested that all Defendants be enjoined from taking any adverse action against Welton or his family for using marijuana extracts for medical purposes. The State Defendants moved to be dismissed from the complaint because Welton failed to raise a justiciable controversy against them and because they could not be enjoined from doing an act that they were not permitted to do in the first place (namely, criminally prosecute Welton for using extracts). Welton then agreed to stipulate to a voluntary dismissal of the State Defendants. Welton subsequently prevailed against County Attorney Bill Montgomery, establishing the right of medical marijuana patients to use extracts of the plant for treatment purposes.

***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. 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, joining with the County Attorney in 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. In October 2013, Judge Gordon ruled in favor of the Plaintiff on motion for partial summary judgment and found that because Maricopa County’s zoning restriction was unreasonable, it was void and, therefore, there were no zoning restrictions in the location where the Plaintiff had wished to open. Judge Gordon subsequently awarded attorneys’ fees, costs, and sanctions against Maricopa County. No attorneys’ fees were awarded against ADHS. All three of these rulings are now on appeal and have been consolidated. ADHS is not a participant in the appeal.

**Other Significant ADHS Programs:**

**Women, Infants, and Children Program**

In addition to providing general legal advice, the Health Unit represented the Women, Infants, and Children (WIC) Program at twelve informal settlement conferences that resulted in settlement; one judicial review of an administrative decision where the Superior Court decided the matter in favor of the WIC Program; and one appeal where the Court of Appeals, on July 22, 2014, decided the matter in favor of the WIC Program.

## **Sexually Violent Persons**

In addition to providing general legal advice, the Health Unit represented the ACPTC in multiple annual hearings (seeking placement in the less restrictive alternative program and/or absolute discharge), hearings regarding the spelling of a SVP's name, and four special actions regarding the conditions of treatment at the ACPTC. We successfully dismissed three of the four special actions; the fourth is the *Nickolich* matter described above.

## **Health Care Institutions Licensing**

In addition to providing general legal advice, the Health Unit represented ADHS at nine enforcement or informal dispute resolution meetings. Each of the meetings was successfully resolved without the need for an administrative hearing. Additionally, Health Unit AAGs obtained an administrative search warrant for the purpose of conducting a complaint investigation of an abortion clinic.

The Health Unit has also drafted Memorandums of Understanding between ADHS, AHCCCS, and three tribes (Hopi Tribe, Navajo Nation, and Tohono O'odham Nation) wherein ADHS would either license or perform courtesy surveys for private, non-tribal, non-HIS, non-638 health care institutions that are located on tribal land so that those facilities can continue to receive AHCCCS funding.

## **Medical Marijuana Program**

The Health Unit provided daily advice to the ADHS Medical Marijuana Program on matters relating to qualifying patients, caregivers, and dispensaries, including advice on complying with criminal search warrants.

## **Behavioral Health Services**

In addition to providing general legal advice, the Health Unit provided legal advice on ADHS' Intergovernmental Agreements for five Tribal Regional Behavioral Health Authorities (Pascua Yaqui Tribe, Gila River Indian Community, Navajo Nation, White Mountain Apache Tribe, and Colorado River Indian Tribes). Health Unit attorneys also assist in reviewing tribal court orders for court ordered treatment to determine whether they are appropriate for domestication.

## **Office of Vital Records**

In addition to providing general legal advice, the Health Unit successfully defended ADHS in five vital records-related administrative enforcement matters. In addition, Health Unit attorneys represented ADHS in a special action seeking reinstatement of a canceled birth certificate for an individual that has a Mexican birth certificate. The matter is currently stayed pending potential resolution outside of litigation.

## **Public Health Emergency Preparedness**

In addition to providing general legal advice, a Health Unit attorney participated in the legal/ethical workgroup to assist in the development of statewide crisis standards of care for patients and health care providers impacted by a public health emergency.

## **Bureau of Health Systems Development**

Health Unit attorneys provide advice to the Bureau of Health Systems Development regarding its Student Loan Repayment Program and Visa-waiver programs.

## **Arizona State Hospital (ASH)**

Health Unit attorneys conducted 248 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.

### **Civil Money Penalties:**

The Health Unit attorneys participated 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 2014 is **\$267,290.00**.

### **Other Health Unit Accomplishments:**

- A Health Unit attorney presented her paper on tuberculosis at the American Public Health Association Annual Meeting.
- Health Unit attorneys participated in the AGO Taskforce Against Senior Abuse.
- Successfully represented ADHS in seven administrative enforcement hearings denying the licensure for hearing aid dispensers.
- Represented ADHS and Vital Records in their support of the AGO Criminal Division during the Biological Resource Center (BRC) investigation. Vital Records assisted families of those whose bodies had been donated to BRC to obtain proper death records without charge. Also assisted the criminal investigators in navigating the system of death records and permits to transport human remains. Multiple divisions of ADHS joined in ensuring that any public health issues caused by BRC's treatment of human remains were addressed immediately with the assistance of the Centers for Disease Control and Prevention and the Maricopa County Department of Health Services.
- Successfully represented ADHS in two informal settlement conferences with midwives who were engaged in conduct outside the scope of their practice.
- Successfully represented ADHS in an administrative enforcement hearing to revoke the license of a child care provider whose treatment of the children in their facility was in violation of the applicable rules.
- Reviewed and filed approximately 80 annual reports in Superior Court regarding sexually violent persons committed to the Arizona Community Protection and Treatment Center.

- Section attorneys also reviewed 418 contracts for ADHS procurement, including IGAs, ISAs, RFPs and MOUs.

## **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. The Education Unit has prepared the following outline of activities and accomplishments during fiscal year 2013/14.

### **Major Accomplishments:**

#### ***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 action against the Superintendent of Public Instruction and the individual members of the Board of Education (collectively, the “Board”) in federal district court. The action alleged that the Superintendent and the Board of Education violated their students’ constitutional rights by enforcing A.R.S. § 15-112, a law prohibiting courses that promote the overthrow of the U.S. government, promote resentment toward a race or class of people, 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 only 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 is nearly complete.

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

Last summer, 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 prohibits 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). The Superior Court allowed three DACA-eligible students who attend MCCCD to intervene. The parties filed dispositive motions, after the court ruled that that the Attorney General possessed the authority to bring the action because the Governor had directed the Attorney General to take action against MCCCD.

#### ***Arizona Charter School Association, et al. v. Arizona Department of Education, et al. (regarding Classroom Site Fund monies)***

The Arizona Charter School Association, and a number of individual charter school operators, brought an action against the Arizona Department of Education regarding its plan to withhold certain

Classroom Site Fund (CSF) monies totaling approximately \$5.8 million that ADE believed it had overpaid to these schools during fiscal years 2011 and 2012. The CSF monies at issue had been paid to schools to compensate them for past shortfalls in CSF payments made between fiscal years 2006 and 2010. The Superior Court found in favor of the plaintiffs, and ruled that ADE must reimburse the plaintiff schools those funds that had been previously withheld between July 2013 and March 2014, totaling approximately \$1.4 million. The parties have agreed to a settlement in principle whereby the plaintiff schools will retain approximately 75% of the disputed funds.

***Cave Creek Unified School District v. Ducey, State of Arizona (Prop 301)***

Plaintiff school districts brought suit in the Superior Court for injunctive and declaratory relief, alleging that the legislative budget violated the base level inflation requirements of Proposition 301 and the Voter Protection Act. The State Defendants prevailed in the Superior Court. On appeal, the Arizona Court of Appeals found that the Voter Protection Act required the Legislature to appropriate the inflation increases in education funding. The Arizona Supreme Court affirmed the appellate court's decision. The Supreme Court remanded the case to the Superior Court for further proceedings. On remand, the plaintiffs requested a retroactive recalculation of the base level back to 2009 as well as the back payment of funds that the Legislature had not appropriated from 2009-2012. After oral argument on the matter, the Superior Court ruled that the State must recalculate the base levels to include the inflation adjustments that it had failed to make in prior fiscal years and that the State must also pay the schools the money that it had withheld during those years. The Court has scheduled an evidentiary hearing later this fall regarding additional equitable defenses to the Plaintiffs' claims and to determine the amount of any repayment (if any).

***Craven, et al. v. Tom Horne, et al. (charter school challenge to school finance)***

Parents and students who 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 and briefing has been completed. Oral argument has not been set.

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

On behalf of the State of Arizona, the Attorney General moved to intervene in an on-going school desegregation case in federal district court 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) arguing 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 has appealed the denial of intervention to the Ninth Circuit Court of Appeals. The matter has been briefed. The Court has not scheduled oral argument.

***Flores v. Huppenthal (1992 ELL funding case)***

In 1992, the Flores Plaintiffs, a group of English Language Learner (ELL) students and their parents, representing a certified class of minority and limited English proficient students in the Nogales

Unified School District (Nogales), brought this action against the State of Arizona, the Arizona State Board of Education, and the Superintendent of Public Instruction, seeking declaratory and injunctive relief. *Flores v. Arizona*, 172 F. Supp. 2d 1225, 1225-26 (D. Ariz. 2000). The Flores Plaintiffs alleged, among other things, that Arizona violated 20 U.S.C. § 1703(f) of the Equal Educational Opportunities Act (EEOA) by failing to provide sufficient funding for ELL students' education in Nogales. The trial court entered judgment against the State Defendants. The State Defendants sought a modification of the judgment after a number of changes to the State's ELL instructional methodology, the No Child Left Behind Act, local structural and management changes in Nogales, and increased overall education funding, which the district court and the Ninth Circuit both denied. However, the United States Supreme Court directed the district court to examine four important factual and legal changes that could justify relief from the earlier judgment that Arizona had violated the EEOA. After hearing evidence of these changes, the district court found that changed circumstances warranted vacating the judgment. The Flores Plaintiffs appealed this decision to the Ninth Circuit, alleging that the new Structured English Immersion models created segregation in the classrooms and deprived students of an opportunity to receive educational content. The State Board of Education (represented by the Education Unit), the Superintendent (represented by Burch & Cracchiolo), and the Intervenor-Legislature (represented by Cantelme Brown), each filed briefs opposing this new theory of liability under the EEOA. The matter has been briefed. The Court has not set oral argument.

#### ***Niehaus v. Huppenthal (Empowerment Scholarship Accounts)***

Taxpayers brought an action challenging the constitutionality of the Empowerment Scholarship Account (ESA) Program, A.R.S. §§ 15-2401 through -2404. That scholarship program allows parents of students with disabilities (and, as expanded after its creation, certain other groups of qualifying students including those residing in underperforming school districts) 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. Plaintiffs alleged the program violated the Aid Clause and the Religion Clause of the Arizona Constitution. The Superior Court found in favor of defendants. The plaintiffs appealed, and the Court of Appeals affirmed the lower court's decision. The Arizona Supreme Court declined review. Based on early estimates, the Department believes that approximately 1300 students will participate in the ESA Program in fiscal year 2015 at a cost to the State of approximately \$17 million.

#### ***Tempe Elementary School District v. Arizona Department of Education (Special Education Administrative Complaint System)***

In November 2013, Tempe Elementary (Tempe El) filed a special action against the Arizona Department of Education, the Superintendent of Public Instruction, the State Board of Education, and the State of Arizona seeking a mandamus order directing the Superintendent to schedule an administrative hearing on a Letter of Findings issued by the Department of Education's Dispute Resolution division finding that Tempe El had violated the Individuals with Disabilities Education Act (IDEA) and ordering compensatory services. The Department argued that the complaint resolution process was an investigatory process and not a final agency decision. The Superior Court found that it was a final agency decision and that the Superintendent had a duty to provide an administrative hearing to the school district. The Superior Court ordered the Superintendent to submit the matter to the Office of Administrative Hearings for an administrative hearing and pay the District's attorneys' fees and taxable costs pursuant to A.R.S. § 12-2030. The Superintendent filed a motion to modify the judgment regarding the appropriate venue for the administrative hearing and on the attorneys' fees award. The Superintendent has argued that the venue for the administrative hearing is not OAH, but an internal

appeals panel. The Superintendent has also argued (and the District has conceded) that a political subdivision such as a school district cannot obtain attorneys' fees pursuant to A.R.S. § 12-2030.

***Administrative Action: In the matter of Allsport Academy; Kin dah Lichi' Olta; And Founding Fathers, Inc.***

The Arizona State Board for Charter Schools issued Notices of Intent to Revoke the Charter of these entities for their receipt of a letter grade of F from the Arizona Department of Education and their failure to meet or make sufficient progress toward the Board's academic performance expectations. These cases required multi-day hearings held at the Office of Administrative Hearings and were the first challenges to the Board's actions under its new Academic Performance Framework. All three Administrative Law Judge (ALJ) decisions recommended revocation. Final orders were issued by the Board in two of the three matters, adopting the ALJ's recommended order. The third school recently agreed to surrender its charter.

***Administrative Action: In the matter of New Destiny Leadership Charter School***

The Arizona State Board for Charter Schools issued a Notice of Intent to Revoke the Charter of this entity for its failure to timely submit its annual audit and annual report and for its failure to provide a comprehensive program of instruction for the requisite number of school days. This entity operated a charter school for three years, but in August 2012 requested a 12-month suspension of its operation as a result of the termination of its lease and its inability to locate another location for the 2012-13 school year. At the time of the Board's consideration of the suspension request, the charter operator was not in compliance with its charter contract and, as a result, its request for suspension was denied. An administrative hearing was held at the Office of Administrative Hearings. The Charter Board adopted OAH's recommended decision revoking New Destiny's charter.

**Major Accomplishments:**

- Advised the School Facilities Board (SFB) in connection with two financial transactions that will save the State over \$14,000,000.00 in lease-purchase payments. The SFB refunded two different series of Certificates of Participation.
- Represented the State Board of Education in the teacher disciplinary process, by handling 11 matters related to teacher discipline that resulted in discipline from suspension to revocation of teaching certificates.
- Assisted the ADE's Audit Unit with matters resulting in agreements to repay over \$1 million dollars and in obtaining an administrative decision requiring a school to repay \$4.7 million.
- Continued representation of the ADE in connection with two U.S. Office of Civil Rights enforcement actions against the Department, alleging violations of the rights of limited English proficient students.
- Represented the State Board for Charter Schools in five administrative proceedings relating to the denial, revocation and non-renewal of charters.



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

- Advised the School Facilities Board in connection with two financial transactions in which it refunded Certificates of Participation and that will save the State over \$14,000,000.00 in lease-purchase payments.
- Represented the ADE's Audit Unit in audit proceedings resulting in agreements to repay over \$1 million dollars and in obtaining an administrative decision requiring a school to repay \$4.7 million.

### **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, data and student privacy, public records, and procurement matters.
- Represented ADE in connection with efforts to recover misspent federal funds from schools, resulting in judgments and or settlement agreements to repay the following amounts: Arizona Academy of Leadership: \$49,000; Paideia Academy: \$123,000.
- Assisted ADE in drafting Federal Educational Rights and Privacy Act (FERPA)-compliant data sharing agreements and in addressing other FERPA and student record confidentiality issues.
- Continued to assist ADE in the administration of the ESA program, a program that allows qualifying students to receive a scholarship from the state to attend private schools, including assistance with enforcement against those who make improper use of ESA scholarship funds.
- Provided legal advice and assistance with contracts and procurement related to ADE's Arizona Education Learning and Accountability System initiative.
- Assisted ADE with ensuring that Tucson Unified School District complies with the terms of the settlement agreement that concluded the State's enforcement of A.R.S. § 15-112 in connection with TUSD's Mexican American Studies Program.
- Drafted a cooperative agreement to allow Arizona to serve as the fiscal agent for states continuing to develop an alternate assessment for children with more severe cognitive disabilities.
- Assisted the Division of Exceptional Student Services (ESS), by providing legal advice, attending meetings, providing guidance through a significant rule-making process and drafting an Interagency Service Agreement for the allocation of responsibilities between ADE and the Department of Health Services for residential special education private placements.

### ***Arizona Department of Education Audits***

- Represented the ADE's Audit Unit in obtaining a final administrative decision for over \$4.7 million against Arizona School for Integrated Academics and Technologies, Inc., based on the charter holder's submission of incorrect student enrollment data that significantly overstated their student enrollment.
- Represented ADE's Audit Unit in connection with audits against the districts and charter schools resulting in the following settlements on behalf of ADE:
  - Kayenta Unified School District agreed to repay approximately \$635,000 over two years as a result of an ADM audit concerning residency issues;
  - Winslow Unified School District agreed to repay approximately \$135,000 over two years as a result of enrollment and data related ADM issues;
  - Pinnacle charter schools operating out of 5 school sites agreed to repay \$175,000 over two years based on failure of the schools to provide sufficient instructional hours; and
  - Camp Verde Unified School District on behalf of South Verde Technology Magnet School agreed to repay approximately \$186,000 over up to five years (dependent on mercy legislation not yet approved) as a result of ADM reporting errors.

### ***Arizona State Board of Education***

- 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.

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

- Provided legal advice to Investigative Unit staff for the Board of Education.
- Represented the State in five disciplinary hearings before the PPAC.
- Resolved contested cases through three settlement agreements and four voluntary surrenders of certificates.
- Attended Board of Education meetings regarding PPAC matters.
- Collaborated with the Investigative Unit and Board of Education Staff regarding proposed disciplinary actions and investigations through regular certificate enforcement team meetings.

### ***Arizona State Schools for the Deaf and 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.
- Drafted several agreements and contracts for ASDB, including a major revision to the regional cooperatives contract agreements.
- Reviewed contracts and agreements.

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

- 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.
- Assisted the Charter Board in its disciplinary and administrative actions against poorly performing schools under its Academic Performance Framework.
- Represented the Charter Board in five administrative proceedings pertaining to charter revocation.

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

- Reviewed agendas and provided advice to ACPE for compliance with Open Meeting Law.
- Responded to the request from PricewaterhouseCoopers, LLC 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 Band for compliance with federal and State requirements, including the College Savings Plans Network Disclosure Guidelines Statement #5 and the Internal Revenue Code.
- Reviewed documents and drafted language for documents consistent with IRS requirements to ensure that duplicative filings of deposits and distributions were not submitted to the Internal Revenue Service by the ACPE and 529 college savings plan vendors.

- Assisted the Executive Director in drafting documents for the Mathematics, Science, and Special Education Loan Forgiveness Program, including promissory notes and paid-in-full notices.

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

- Provided day-to-day advice on personnel issues, conflict of interest issues, procurement issues and federal grant and bond issues.
- Advised the SFB on open meeting law issues, public records requests, and proposed legislative changes.
- Drafted a memo to assist the SFB in requesting alternative remedial action from the United States Department of Energy, via the Governor's Office of Energy Policy, for a violation of the Buy American Act in the School District Solar Energy Project by a vendor that was misled by the manufacturer. Continued to monitor litigation in the same matter being handled by the Apache County Office of the Attorney's General.
- Advised the SFB on the course of action required by unspent proceeds from the sale of federally qualified school construction bonds in 2010. Reviewed and revised documents drafted by bond counsel and trustee.
- Advised the SFB in connection with two financial transactions that will save the State over \$14,000,000.00 in lease-purchase payments. The SFB refunded two different series of Certificates of Participation.

### ***Attorney General Opinions***

- Reviewed seven requests for an Attorney General Opinion and recommended that decline to review letters be issued in response to six requests and that one decline to review letter with revisions be issued.

### ***Open Meeting Law Enforcement Team***

- Investigating two Open Meeting Law complaints (City of Tolleson and Election Integrity Commission of Pima County).

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

**Dennis Carpenter, Section Chief**

The Employment Law Section (ELS) promotes and supports the effective management of Arizona Government's most important resource - its employees. ELS provided advice to state agencies on a wide variety of employment law issues. ELS also provided extensive training for supervisors in state government to promote good management practices and prevent liability to the state. ELS also represented the State in workers compensation and litigation matters that would otherwise have been referred to outside counsel.

### **Major Case Highlights:**

#### **ELS ADVICE AND HEARING UNIT**

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

ELS provided over 2500 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 advice included several high-profile and sensitive issues involving advice to Boards and Commissions regarding employment issues with their Executive Directors where there was extensive media coverage involved.

##### **ELS provided extensive training to supervisors statewide.**

As a result of the 2012 personnel reform, the Arizona Department of Administration committed to providing a four-hour legal training class to all supervisors in state government. ELS agreed to provide the four-hour training classes on ADOA's behalf, so throughout the year attorneys from ELS trained almost a thousand new supervisors. In addition, attorneys from ELS worked with ADOA to revamp the original training class, and spent many hours developing a new and updated curriculum. The training teaches supervisors the various laws regarding employment and how to avoid harassment or discrimination charges; how to keep in compliance with laws involving employees' medical issues, and how to prevent overtime pay violations. The training is important because supervisors are the front line in preventing liability to the state for violations of employment laws.

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

ELS opened 52 new administrative appeals, up from 40 in the previous year, and spent, 2,147 hours on administrative hearings. Significant matters include the following:

###### ***Berndt v. Arizona Dept. of Correction***

The Department of Corrections terminated an employee for making a sexually explicit gesture in front of several co-workers. The Hearing Officer and the Personnel Board recommended overturning the termination and converting it to an 80-hour suspension instead. Post-personnel reform, Director Ryan of ADC rejected the Personnel Board's recommendation to overturn the dismissal and instead kept the dismissal in place. Berndt appealed to Superior Court. In affirming Director Ryan's decision to reject the Personnel Board's recommendation, the Court recognized that its judicial review requires deference to Director Ryan's decision over the Personnel Board's. The Court ruled ADC had presented enough evidence to support terminating the employee.

### ***Bryant v. Cochise County Adult Probation Department***

The agency terminated the employee, an Adult Probation Officer, for failing to disclose his involvement in sexual misconduct that led to his discharge from the United States Armed Services prior to his employment by the Department. The employee appealed his termination. After significant investigation and research by the Department as well as the attorney assigned to the case, a hearing was held before a hearing officer in Cochise County Superior Court. The termination decision was upheld and the employee's appeal denied.

### **Workers Compensation**

ELS's workers compensation group opened 118 new matters and closed 108 matters, numbers which are slightly increased from the past three years. ELS lawyers and legal assistants billed 3857 hours to workers compensation matters. The following matter was particularly significant:

### **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 16 new risk-management lawsuits during the last fiscal year and attorneys and legal assistants billed over 14,168 hours on risk-management litigation matters. In addition, ELS attorneys also spent 789 hours representing client agencies in administrative review actions and non-risk management special actions and lawsuits in Superior Court.

### **Current Litigation Highlights:**

#### ***Brydle v. DES***

As part of his job duties, an employee submitted an audit report detailing accounting errors in vendor payments. Over one year later, the employee was terminated. The employee believed that he had been retaliated against for submitting that report. In addition to filing a wrongful termination lawsuit, the employee sued three individuals alleging that they violated his First Amendment rights. The Attorney General's Office moved to dismiss the First Amendment claim because he had not spoken on a matter of public concern. The First Amendment does not protect speech that is made in the performance of one's job duties. The District Court granted the motion.

#### ***Willie Mitchell, Jr. v. Ariz. Bd. of Regents***

Willie Mitchell, Jr. was expelled from Arizona State University after the university learned that he had lied about his felony conviction while applying for an on-campus job. Before attending ASU, Mitchell had been convicted of unlawful sexual intercourse with a minor. During its investigation, the university discovered that in addition to lying about his conviction on his job application, Mitchell had failed to disclose his status as a sex offender when he applied for admission. Mitchell appealed the university's decision to expel him, arguing that there was insufficient evidence to support the expulsion, and that the university acted arbitrarily and capriciously in doing so. The Maricopa County Superior Court disagreed and affirmed the expulsion.

#### ***McElmurry v. Arizona Dept. of Agriculture***

McElmurry, an agriculture inspector, sued the Department claiming it had violated her rights under the Arizona Civil Rights Act, the Americans With Disabilities Act, and that her employer and supervisors had subjected her to a hostile and harassing work environment in violation of Title VII. Our attorneys moved for summary judgment against McElmurry because her ACRA claims were time barred, her ADA claims were barred by the 11<sup>th</sup> Amendment, and she had failed to show that her treatment by the Department constituted “severe or pervasive” conduct to support an unlawful hostile work environment claim. The Court agreed with all of the State’s arguments and granted summary judgment for the Department.

## **Discrimination Charges**

ELS monitored and assisted agencies in responding to 90 new charges of discrimination filed with the federal Equal Employment Opportunity Commission, up from previous years. ELS closed 33 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 and the Court of Appeals.

### **Major Case Highlights:**

#### ***Vong v. Aune***

Vong challenged the constitutionality of rules promulgated by the Arizona Board of Cosmetology. Working with Senior Counsel Mike Tryon, LES successfully defended the Board before the trial court and the Court of Appeals.

#### ***Magness v. Arizona Registrar of Contractors***

Magness asserted a claim against the Registrar’s Residential Contractor’s Recovery Fund. After the trial Court ruled in her favor. LES successfully pursued an appeal in the Court of Appeals. The Court of Appeals outlined the procedures to be followed in deciding such claims, adopting the position argued by the Registrar. The case was reversed and remanded.

#### ***Kost v. Arizona Registrar of Contractors***

Kost brought a special action against the Registrar, demanding that it retroactively change its records and that it bring suit against his former business associate. LES succeeded in getting the matter dismissed by the trial court, a result affirmed on appeal.

#### ***McCormick v. Arizona Registrar of Contractors***

McCormick sought payment from the Registrar's Recovery Fund. The Registrar denied the claim. McCormick then appealed to the Superior Court. That Court overturned the ROC decision, awarding McCormick payment from the Recovery Fund as well as attorney's fees. The Court of Appeals found that the ROC had correctly determined that McCormick was not eligible under the criteria set forth in the Recovery Fund statutes, and vacated the award to McCormick.

***Okon v. Arizona Regulatory Board of Physician Assistants***

Physician assistant Okon had a history of disciplinary actions, primarily concerning his failure to comply with the statutes requiring that he be supervised by a physician while on probation, a review of his patient charts raised concerns about his record keeping as well as his medical knowledge and the quality of care he provided. The Board then ordered him to undergo a Physician Assessment and Clinical Education Evaluation. That assessment found him unsafe to practice. He was ordered to undergo additional evaluations which he refused. He later agreed to a practice restriction which he then violated. After an OAH hearing, the ALJ recommended that his license be revoked, that he pay a \$3,000 civil penalty, and that he be assessed the costs of hearing. The Board adopted the ALJ decision. Okon then filed a judicial review action. The Superior Court upheld the Board, as did the Court of Appeals.

**Major Accomplishments:**

Provided the Arizona Board of Technical Registration with an Attorney General opinion interpreting the alarm agent statutes.

Assisted in revising the Attorney General's Agency Handbook.

**Civil Assessments and Penalties**

Assisted client agencies in obtaining civil penalties, cost recoveries and fines totaling \$1,700,141.84, broken down as follows:

Dental Board	\$23,000.00
Accountancy Board	\$4,031.30
Registrar of Contractors	
Against Licensees	\$172,250.00
Against Unlicensed Contractors	\$338,837.00
Repaid to Recovery Fund	\$301,822.00
Department of Racing	\$45,648.33
Medical Radiologic Technicians Board	\$875.00
Pharmacy Board	\$3,000.00
Board of Cosmetology	\$97,337.50
Nursing Board	\$2,250.00
Medical Board	\$1,000.00
Liquor Department	\$50,000.00
Barber Board	\$2,000.00
Naturopathic Board	\$11,500.00
Private Postsecondary Education	\$2,000.00
Chiropractic Board	\$3,500.00
Nursing Care Administration	\$3,100.00
Boxing & Mixed Martial Arts	\$1,050.00
Veterinary Board	\$5,000.00



Massage Board	\$1,000.00
Physical Therapy	\$1,500.00
Weights and Measures	
Through hearings	\$66,200.00
Through consent agreements	<u>\$522,940.00</u>
	\$1,659,841.1

**Cost Reimbursements:**

Nursing Care Administrators	\$4,600.00
Accountancy Board	\$22,889.45
Cosmetology Board	\$120,099.50
Medical Board	<u>\$2,711.76</u>
	\$150,300.71

**Other Savings to State Agencies:**

Successfully defended claims against the Registrars Residential Contractor's Recovery Fund totaling in excess of \$200,000.00.

**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 Arizona Department of Transportation (ADOT) Unit, Tort Unit, Department of Corrections (DOC) Unit, Appeals Unit and a Tucson Unit (which handles cases in Southern Arizona).

**Major Case Highlights:**

***Arenberg v. Department of Corrections, et al.***

In *Arenberg*, the Plaintiff alleged the DOC had failed to provide him with necessary medical care related to a prostate condition. A settlement was not reached because the Plaintiff demanded an amount which was completely unreasonable. After a two week trial in Federal Court the jury returned a verdict of \$3,000. The Plaintiff's lawyer asked the jury in his closing argument to award \$120,000 to this client.

### *Lee v. State of Arizona, et al.*

The jury returned a defense verdict in favor of the State of Arizona following a three week trial in a case where the Plaintiff alleged the State was negligent in its design of an intersection. The jury found the State's design of the intersection met the standard of care and did not cause or contribute to an accident involving a large truck and the Plaintiff's vehicle.

### **Major Accomplishments:**

The hourly rate for cases defended by the Liability Management Section this year was \$105 per hour which is the same rate as the previous year. In comparison, outside counsel retained by the State to defend cases primarily in conflict situations is much more expensive. The average hourly rate for outside counsel this year was \$199 per hour, an increase of \$7 per hour over the previous year.

Additionally, the number of non-conflict cases referred to outside counsel by LMS dropped to six (6), a decrease of approximately forty percent (40%) from FY 12-13. The Section's goal is to send no non-conflict cases to outside counsel because its lawyers and staff defend the cases at a much lower rate than outside counsel.

### **Dollars Saved:**

For cases closed in FY13-14 the Tort Unit received claims against the State and its employees totaling more than \$1 Billion, and resolved them for \$3,079,011. The DOC Unit closed 114 cases this fiscal year. The verdicts and settlements in those cases totaled \$449,323. These figures demonstrate a tremendous savings to the State of Arizona.

## **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. The 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 the management of state trust land including the areas of urban development, archaeology, mining and water development and rights on State Trust Lands. NRS also provides legal counsel to Arizona State Parks, the Prescott Historical Society, the State Mine Inspector, Board of Geographic and Historic Names, Arizona Geological Survey (the State Geologist) and the State Forester. 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 has been a levelling of the effects of the recent real estate market decline, but the Department's administration of Certificates of Purchases and long-term leases, a significant source of revenue, continues to generate issues for legal review (extensions, assignments, estoppels). NRS attorneys provided assistance on these transactions, in preparation and review at the time of the original

transactions, and in advising the Department on issues related to the continuing administration of these transactions.

### **Significant Matters:**

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

NRS represents the State Land Commissioner in proceedings before the Navigable Streams Adjudication Commission (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 watercourse for title purposes. The State Land Commissioner has a statutory duty to advocate for the public trust, to promote public trust interests. NRS attorneys have engaged in extensive preparation for hearings, and have been representing the Land Commissioner in the remanded hearing on the Gila River.

#### **Yarnell Hill Fire Public Records Requests and Litigation Preparation**

NRS attorneys assisted the State Forester in responding to numerous public records requests related to the Yarnell Hill Fire and undertook preparations for administrative litigation. Documents reviewed number in excess of 9,000.

#### ***State v. Sussex***

NRS attorneys pursued a quiet title and trespass action on behalf of the Arizona State Land Department and prevailed in the Superior Court and the Court of appeals. There is a pending Petition for Review filed by the defendant.

#### **Transactional Support**

NRS attorneys provide significant legal advice and assistance regarding transactional issues from complex partial assignments of long-term leases, to the structuring of complex lease and sale transactions.

#### **Water Rights Adjudications**

The NRS represents state agencies in the adjudications and keeps agencies' counsel advised of developments in the Little Colorado and Gila River General Stream Adjudications. NRS reviewed numerous filings in both adjudications including, filed objections to a Special Master Report in the Little Colorado Adjudication, and on behalf of the Land Department, filed comments and a response to the federal government's motion for summary judgment that resulted in the Special Master directing the parties to consult.

### **Major Case Highlights:**

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

NRS attorneys successfully defended the Land Commissioner's decision to award a grazing lease to the prior lessee rancher over environmental applicant Wildearth Guardians. The Land Commissioner had initially determined to go to competitive bidding on the basis of an offer of additional rental by Wildearth Guardians. The Land Department took sealed bids, but prior to the time for opening the bids, the rancher appealed and after hearing, the Commissioner adopted the recommendations of the hearing officer to award the lease to the rancher. The Superior Court and the Court of Appeals affirmed the decision and the Arizona Supreme Court denied the petition for review.

#### ***Epicenter v. State Land Department***

NRS attorneys assisted outside counsel in working toward settlement of litigation seeking to void two sale transactions and recover claimed damages of approximately \$50.8 million. The settlement did not result in payment of any damages.

#### **Desert Ridge Holdings LLC Administrative Appeal**

NRS attorneys resolved and removed an outstanding administrative matter that was an impediment to the transfer of \$15 million to the common schools expendable following an order cancelling a certificate of purchase.

### **Monies Saved or Generated:**

NRS provided legal advice that supported the Land Department's generation of approximately \$93,702,328 in sale and long-term lease revenue during the fiscal year.

#### **Wolff Scottsdale, LLC**

NRS provided legal advice and assistance in negotiating a settlement of a dispute regarding prepaid rental, resulting in a recovery of \$ 148,144.42.

### **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 Accomplishments**

#### ***First Data Corporation et al. v. Arizona Dep't of Revenue***

TAX prevailed in a corporate income tax case before the Arizona Court of Appeals. First Data had sold one of its subsidiaries and elected to treat the sale as an asset sale under I.R.C. § 338(h)(10). First Data classified the gain from the transaction as nonbusiness on its Arizona corporate income tax return. The Arizona Department of Revenue issued an approximately \$2.7 million assessment reclassifying the gain as apportionable business income, which the Court of Appeals upheld.

### ***Home Depot USA, Inc. and Affiliates v. Arizona Dep't of Revenue***

TAX prevailed in another corporate income tax case before the Arizona Court of Appeals. Home Depot filed refund claims in the amount of \$10,953,121. Home Depot argued that the income of the subsidiary that held the Home Depot trademarks should be excluded from its combined Arizona income tax reports on the grounds that the subsidiary was not part of its unitary business. In addition to prevailing on Home Depot's refund claim, this victory preserves tens if not hundreds of millions of dollars in tax revenue going forward not just with respect to Home Depot, but with respect to all other companies that could attribute corporate revenue to an out-of-state subsidiary that holds the corporate trademark.

### ***Cable One v. Arizona Department of Revenue et al.***

TAX obtained a favorable decision from the Arizona Court of Appeals, which held that a cable company that had expanded its services to provide Voice over Internet Protocol ("VoIP") telephone services can be valued by the Department of Revenue for property tax purposes as a telecommunications company. Prior to offering VoIP services to its customers, the company had been valued by local county assessors as a cable company. The decision overturned an unfavorable Tax Court ruling on summary judgment.

The Court of Appeals agreed that an entity that provides telephone service via VoIP meets the statutory definition of a telecommunications company even though the company derives a relatively modest amount of income from that service. The decision allowed the applicable taxing authorities to retain approximately \$2.6 million in additional tax revenues that resulted from the company's property being valued under the telecommunications statute relative to what the company's tax liability would have been as a cable company.

### ***Penn Racquet v. Arizona Department of Revenue and Maricopa County***

TAX prevailed in another property tax matter at the Court of Appeals relating to the Department of Revenue's valuation tables that are used by all county assessors to value personal property. Penn Racquet alleged that the Department's depreciation tables incorrectly depreciated its tennis ball manufacturing equipment as a matter of law. The Court of Appeals upheld the Department's depreciation tables, preventing hundreds if not thousands of copycat claims from other taxpayers.

### ***Papillon Airways, Inc. v. Arizona Department of Revenue***

Papillon, operator of Grand Canyon Airways, was assessed use tax for dynamic equipment purchases. Papillon's affiliated companies, which leased helicopters to Papillon, were assessed transaction privilege tax under the rental classification. Papillon and its affiliates argued that they were eligible for exemptions available to air carriers that qualified as a supplemental air carrier under 14 Code of Federal Regulations, part 121. The Tax Section prevailed on summary judgment. The taxes and interest at issue totaled \$1,021,913.49. The case is on appeal.

### ***Money Generated on Behalf of the Arizona Department of Transportation:***

TAX negotiated matters or prevailed in actions resulting in the payment of \$351,445 to the Arizona Department of Transportation relating to income, fuel and aircraft license taxes.

**Money Generated or Saved on Behalf of the Arizona Department of Revenue:**

The above cases litigated on behalf of the Department of Revenue saved approximately \$17,250,000 in tax revenues. As with most tax cases, however, the real savings and value to the State must be measured by the additional tens or hundreds of millions of dollars in taxes that were saved by preventing copycat claims from similarly-situated taxpayers.

**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. Attorneys representing 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. A typical administrative appeal will take approximately six months to conclude. Attorneys representing DPS 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:**

***Bison Contracting v. State***

This is an \$8,500,000 construction contract suit arising from ADOT's SR 89 Granite Creek Bridge project. ADOT's contractor alleges damages resulted from differing site conditions, dewatering issues, and access issues.

***State v. Marwest, et al.***

These consolidated matters involved condemnation of two separate parcels to allow construction of a traffic interchange for the Ehrenberg-Phoenix Highway at Perryville Road in Phoenix. The property owner sought just compensation in the amount of \$4,800,000. The matters were ultimately settled for \$2,500,000, saving the State \$2,300,000.

***State v. Mormino, et al.***

This matter involved condemnation of 19.8 acres for the construction of SR 24 in Maricopa County. The case was settled for \$2,208,335, which was more than \$1,000,000 below defendant's demand.

***State v. 202 Holdings, et al.***

This matter involved acquisition of 56 acres for the construction of SR 24 in Maricopa County. The case was settled for \$7,500,000, which was \$5,500,000 below defendant's demand.

***State v. BD218, et al.***

This is a pending condemnation matter, filed to acquire 15 acres for the construction of SR 24 in Maricopa County. Approximately \$7,500,000 is at issue.

***State v. 303 Investment Holdings, et al.***

This matter involved acquisition of 11.5 acres for construction of SR 303 in Maricopa County. The matter was settled for \$2,000,000, which was \$1,474,000 below defendant's demand.

***State v. Virgin Farms Partners, et al.***

This matter involved acquisition of 50 acres for construction of SR 303 in Maricopa County. The matter was settled for \$6,600,000, which was \$2,460,000 below defendant's demand.

**Other Significant Matters**

TRN attorneys successfully defended MVD's suspension of appellant's driver license in *Svensen v. ADOT/MVD*. Appellant argued that silence, following a request to submit to a breath test to determine blood alcohol content, was not tantamount to refusal. The court affirmed that anything less than unequivocal assent constitutes refusal. The court also affirmed its jurisdiction to hear the matter despite language in A.R.S. § 12-913 indicating a final decision of the Superior Court in an administrative appeal "may be appealed to the supreme court."

TRN attorneys filed an Amicus Brief with the Arizona Supreme Court in *City of Phoenix v. Garretson*. The underlying condemnation case involved denial of access to a parcel of land located on Jefferson Street. Access to Jefferson Street was taken to facilitate construction of the city's light rail project. The parcel retained direct access to other streets. Contrary to the State's position, the Supreme Court ultimately ruled that an owner is entitled to make a claim for compensation if the

government eliminates access to an abutting street, even if the parcel retains direct access to other abutting streets.

**Cost Savings to the State**

Cost savings to the State resulting from work on eminent domain and construction contract matters 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 \$18,834,156.00.

**Civil Assessments and Penalties**

TRN attorneys filed four motor carrier enforcement cases before MVD's Executive Hearing Office which resulted in civil penalties totaling \$20,000.





**TOM HORNE**  
ATTORNEY GENERAL

**OFFICE OF THE ARIZONA ATTORNEY GENERAL**  
**CHILD AND FAMILY PROTECTION DIVISION**

**HEATHER PELLEGRINO**  
DIVISION CHIEF COUNSEL

## **FY2014 ANNUAL REPORT**

### **APPENDIX E**

#### **MISSION**

To provide the Arizona Department of Economic Security (ADES) and the Department of Child Safety (DCS) 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.

#### **DIVISION SUMMARY**

The Child and Family Protection Division (CFPD) provides comprehensive legal representation to ADES and DCS with more than 500 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 and DCS 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 the Department of Child Safety (DCS). 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 PSS provide legal representation to DCS throughout Arizona's 15 counties with ten offices located in Flagstaff, Gila/Pinal, Kingman, Mesa, Phoenix I, Phoenix II, 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, severance, 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 DCS, 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 DCS in actions to achieve the permanent placement of children through guardianship, severance of parental rights, and adoption proceedings.

**Policy & Training:** PSS lawyers advise DCS 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 mentor new PSS attorneys, second chair trials, litigate high profile cases, and assist with straight to severance cases. In addition, Litigation Support attorneys provide substantive and ongoing training to PSS attorneys, DCS caseworkers and supervisors, members of the judiciary, and various child welfare system stakeholders throughout Arizona.

**PSS Appeals:** For PSS, the Child and Family Protection Division's Appeals Unit regularly appears before the Arizona Court of Appeals and Supreme Court to defend and/or challenge trial court decisions and to file and respond to appeals and special actions. In FY2014, the Appeals Unit filed 155 briefs on behalf of PSS and prevailed in 95% of the PSS appeals resolved. Additionally, the Appeals Unit handled 426 substantive motions or issues and reviewed an additional 64 motions written by PSS attorneys. The Court of Appeals issued seven published opinions in FY2014 in cases that were briefed by the Appeals Unit on behalf of DCS. Five of them were affirmed in DCS's favor.

In addition to its regular appellate work, the Appeals Unit assisted PSS by:

- Conducting training of new-hire attorneys and refresher training for all PSS attorneys at attorney meetings and brown-bags.
- Researching and providing subject-specific resource materials.
- Providing training to the client on a variety of issues including, but not limited to, the Indian Child Welfare Act (ICWA), Fourth-Amendment search and seizure, ongoing issues with CHILDS, and OCWI information.
- Assisting with revisions to the State Bar's Appellate Handbook.
- Collaborating with the Supreme Court's Administrative Office of the Courts to produce a guidebook for dependency appellate practitioners and a guide to the ICWA.
- Revising the ICWA chapter for the Conference of Western Attorneys General's American Indian Law Deskbook (to be published by Thompson-West in FY2015).

#### **Accomplishments:**

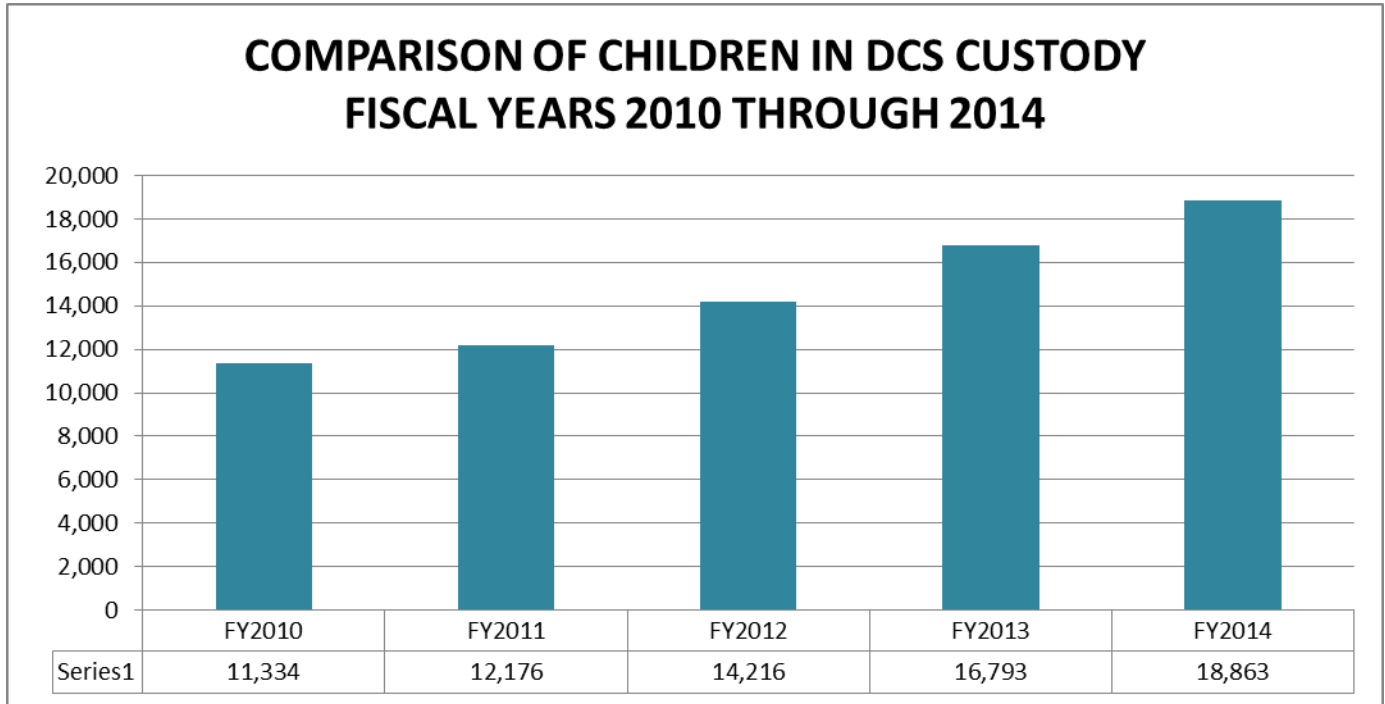
- In FY2014, PSS attorneys prepared for and/or attended 82,789 court appearances. PSS attorneys prepared for or represented DCS in trial a total of 6,656 days in FY2014.

#### **Substantive Practice Changes:**

- During FY2014, the Division of Children, Youth and Families was separated from the Department of Economic Security. In its place, DCS was established to focus exclusively on child safety.
- In preparation for the client's reorganization, PSS reviewed all statewide pleadings and forms to ensure consistency of legal practice throughout Arizona. Therefore, when the legislation creating the new agency became immediately effective, PSS was able to seamlessly update the new agency's name and all statutory references in PSS pleadings and forms.
- In Spring 2014, PSS reorganized into Northwest and Southeast Regions. Each region covers 7 1/2 counties. This reorganization was implemented to provide additional mentoring and support for PSS Units across the state. This structure allows PSS to more closely collaborate with the client on addressing systemic child welfare issues.
- During FY2014, the Office of Child Welfare Investigations (OCWI) was created. This new section of the DCS investigates matters of criminal conduct and works closely with law enforcement. PSS worked with OCWI to help establish their role in the juvenile court system, as it relates to investigation of potential dependencies resulting from criminal conduct.

**In FY2014 PSS attorneys and staff statewide:**

- Protected more than 18,863 children from abuse and neglect<sup>1</sup>
- Filed 5,298 new dependency petitions<sup>2</sup>
- Reunited 2,674 children with their parents
- Filed 320 guardianship motions
- Placed 400 children with permanent guardians
- Filed 2,353 severance motions and petitions<sup>3</sup>
- Filed 355 adoption petitions
- Assisted in the adoption of 2,297 children by relatives or foster parents



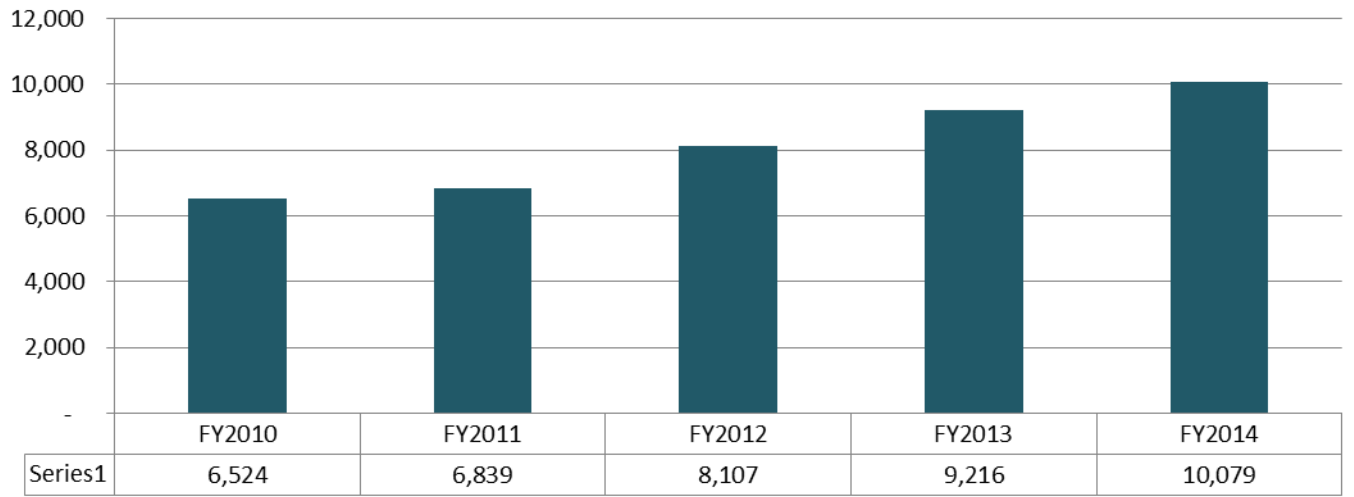
DCS has seen a 66.43% increase in the number of children in care from the end of FY2010 to the end of FY2014.

<sup>1</sup> DCS has seen a staggering increase in the number of children in DCS care this fiscal year. At the end of FY2013 there were 16,793 children in care. This increased by 2,070 children to bring the number of children in care at the end of FY2014 to 18,863. This 12.33% yearly increase in the number of children in care is directly correlated to the rise in dependency petition filings statewide, as well as challenges in achieving permanency for children in a timely manner.

<sup>2</sup> PSS filed 459 more dependency petitions in FY2014 than the previous fiscal year.

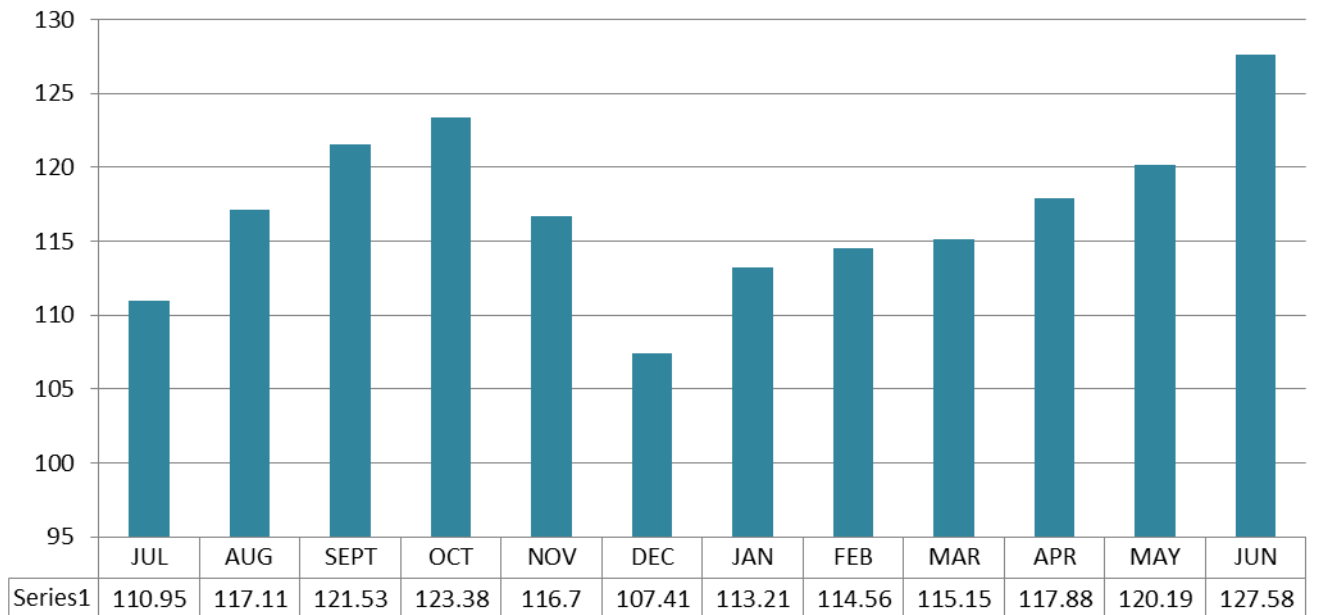
<sup>3</sup> Establishing permanency is the goal for all children in DCS's custody. If reunification with a parent cannot be achieved, DCS will proceed with severance of parental rights to free the child for adoption. PSS has continued its efforts with the Case Permanency Staffings to ensure timely review of cases for permanency and to identify grounds for, and barriers to, severance as early as possible. In addition, the straight to severance procedures implemented for cases in which reunification is determined not to be in the child's best interests (i.e. severe abuse cases; surviving siblings in child death cases and new babies to parents whose rights were recently severed) have freed children for adoption at a much earlier stage in the proceedings. During FY2014, there was a total increase of 229 severance motions and petitions filed from FY2013.

## GROWING CASE NUMBERS FISCAL YEARS 2010 THROUGH 2014



Similarly, PSS has seen a 54.50% increase in the number of open cases from the end of FY2010 to the end of FY2014.

## PSS ATTORNEY CASE LOADS BY MONTH DURING FISCAL YEAR 2014



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 FY2014 were significantly higher than this standard.<sup>5</sup>

## **CHILD SUPPORT SERVICES SECTION**

The Child Support Services Section (CSS) of the Attorney General's Office seeks to ensure that children receive financial support from their parents. The Section provides legal advice and representation to ADES' Division of Child Support Services (DCSS). 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. CSS also handles litigation and 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 Courts. Because more than 45% of Arizona's children are born to unwed parents, establishing paternity is often the first step in the child support process. During FY2014, the number of paternity orders and child support orders entered by the court increased significantly (23% and 14% respectively) due to an increased focus on paternity and establishment cases by DCSS. In an effort to improve collections, the volume of modification and enforcement actions also increased by approximately 10% during FY2014. CSS trial attorneys made over 28,000 court appearances, an 8% increase from FY2013. Overall, the DCSS caseload decreased from 197,000 cases to 185,000 open child support cases as a result of case closures. Consequently, the litigation caseload for CSS decreased from 8,422 cases at the close of FY2013 to 7,727 cases at the close of FY2014. The average caseload per trial attorney is 368 cases. 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 updated 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.

**CSS Appellate Matters:** In FY2014, the CFPD Appeals Unit successfully represented DCSS in a number of active and new appeals. One dedicated attorney wrote answering briefs in appeals filed by pro per litigants and resolved a number of cases through substantive motion filing. One appeals attorney is dedicated to CSS appeals, supported by others when necessary. Attorneys handling CSS appeals staff every case with an experienced reviewer from the Solicitor General's Office. The

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<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. PSS is structured differently and thus the per attorney standard is higher.

<sup>5</sup> 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 DCS.

Appeals Unit filed 9 appellate briefs in CSS matters and argued a special action before the Court of Appeals. In addition, 26 substantive matters were handled by the Appeals Unit for CSS trial attorneys.

**In FY2014, CSS helped Arizona children receive the support to which they were entitled by:**

- Judicial establishment of paternity for 1,698 children<sup>6</sup>
- Establishing new child support orders for 4,526 families
- Obtaining child support judgments of over \$49.5 million
- Resolving 4,801 actions for modification of support
- Representing DCSS in over 28,456 court appearances
- Assisting DCSS to collect over \$356 million in support
- Increasing the collections for current support from .54:1 to .55:1 for every child support dollar owed
- In bankruptcy cases, collecting \$569,228.51 in support
- In non-Family Court litigation, collecting \$1,087,010.81 in support<sup>7</sup>; an 11% increase from FY2013

**Substantive Practice Changes:**

- During FY2014, CSS and PSS worked jointly to establish a pilot program in Pinal and Pima Counties utilizing Family Court Rule 5.1. This rule allows the courts to consolidate juvenile and family court actions. The pilot program has resulted in the sharing of pertinent location and paternity information between CSS and PSS; therefore, eliminating duplicative and possibly conflicting efforts in separate actions.

**Accomplishments:**

During the past fiscal year, the CSS has been proactive in finding new ways to engage with parents and to assist them in resolving their child support legal issues. CSS has spearheaded the following events:

**Veterans Outreach:** 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 CSS attorneys participated in 6 Veterans StandDown events statewide and monthly visits to the Davis Monthan Air Force base to answer questions and provide child support information.

**Come to Court Events:** In an effort to increase child support collections without filing Petitions to Enforce, DCSS and CSS sent letters to over 1,100 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. Over 40% of the obligors appeared at these five events, and CSS collected over \$70,000. The greatest benefit of these events was not the amount of money collected but the positive resolution of many child support issues and encouraging open communications with parents. As a result of these efforts, 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.

**Data Sharing Agreements:** During FY2014, CSS drafted two data sharing agreements - one between DCSS and the Industrial Commission and the other between DCSS and the Arizona State Retirement System (ASRS). The purpose of these data sharing agreements was to identify ASRS members and

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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.

Workers' Compensation recipients who have existing child support arrears. DCSS may then issue income withholding orders on the retirement accounts or workers' compensation payouts to apply towards child support arrears and ultimately increase the monies collected for Arizona families.

## **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 Support Services and advises and represents DCS in all matters other than cases handled by PSS. CLA advises and represents ADES and DCS in matters regarding 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 agencies by consumers for the overpayment or fraudulent collection of public benefits. CLA advises and represents the following ADES and DCS 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 FY2014 the Appeals Unit addressed four new Notices of Appeal, filed two appellate briefs, and drafted and/or filed 10 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 Unit. Because of the discretionary nature of the review, the Appeals Unit prevailed in two of the three decisions rendered by the Court of Appeals. The Appeals Unit also assisted CLA in providing legal research and advice to the client on a variety of issues, mostly centered around confidentiality of CHILDS information, and worked with CLA's policy attorneys to address issues such as Fourth Amendment search and seizure concerns, new legislation, intergovernmental agreements, and public records requests.

### **In FY 2014, the CLA Civil Practice Team:**

- Opened, litigated and/or reviewed 886 administrative, litigation and civil cases.
- Opened and reviewed 132 contracts, leases, Intergovernmental Agreements and/or amendments. There is a decrease from FY 2013 by 106.
- Obtained 328 civil judgments in civil collections cases totaling \$1,225,244.51. This is an increase of \$523,705.51 over FY 2013.
- Secured an additional \$138,374.29 in civil judgment collections without the need for reducing multiple matters to a judgment. This amount increased by \$21,446.52.
- Collected \$309,739.21 through wage and bank garnishments. Collections through wage garnishments decreased by \$13,081.98.
- Filed 559 civil collections cases. Cases filed in FY 2014 increased by 201.
- Opened over 99 "matter" files for tracking significant legal advice provided to ADES. The matter files increased by 32 in FY2014.

- Responded to over 1,452 subpoenas and requests for public records. During FY2014, the subpoena requests increased by 68.

<b>Program</b>	<b>Cases Closed</b>
Adoption Subsidy	3
Adult Protective Services Review Team	63
Arizona Early Intervention Program-AZEIP	2
Bankruptcy P04	2
Cash Assistance	2
Childcare Administration	3
Comprehensive Medical And Dental Program	1
Contracts/Leases/IGA	16
Division Of Benefits/Med Elig (DFS)	2
Division of Child Support Enforc (CSE)	1
Division of Develop Disab:Grievances	38
Division of Develop Disab:Long Term Care	44
Division of Developmental Disabilities	15
Employee Rehabilitation Services	1
Equal Employ Opportunity Comm (Matters)	3
Foster Care Licensing	5
Mediation	1
Medical Assistance Under DBME	8
Mental Health (CYF/CPS Cases)	21
Personnel Div Of Aging & Adult Svcs	2
Personnel Div Of Benefits & Med Elig	25
Personnel Div of Business and Finance	1
Personnel Div Of Child, Youth & Families	7
Personnel Div Of Devell Disabilities	27
Personnel Div Of Employ Of Rehab Svcs	2
Personnel Div Of Technology Services	4
Personnel Office of Accountability	7
Protective Services Review Team	153
Rehab Services Administration (RSA)	2
Unemployment Insurance Benefits	91
Unemployment Insurance Contributions	6
Vocational Rehab & Blind Services	16
<b>Grand Total</b>	<b>574</b>



<b>Civil Collections by Program</b>			
<b>Program</b>	<b>Filed</b>	<b>Judgments Entered</b>	<b>Total Judgments</b>
Cash Assistance	1	0	0
Childcare Administration	3	2	\$3483.00
Combination Cases	2	1	\$2,441.50
Day Care	0	1	\$10,777.75
Div. of Developmental Disabilities	2	2	\$16,383.52
Employment Overpayment	2	1	\$14,745.00
Food Stamp	3	2	\$4,307.99
Foster Care Licensing	1	1	\$7,448.40
Parental Assessment	1	1	\$2,280.84
Provider Child Care	0	1	\$75,595.21
Unemployment Insurance Benefits	544	316	\$1,087,781.30
<b>Grand Total</b>	<b>559</b>	<b>328</b>	<b>\$1,225,244.51</b>

**FY2014 - CLA Civil Collections Unit:**

<b>Civil Collections by Program</b>		
<b>Program</b>	<b>Collections Rec'd Judgment not Filed</b>	<b>Collections without Reducing Matter to Judgment</b>
Cash Assistance	1	\$1,045.00
Employee Overpayment	1	\$1,091.00
Food Stamp Plus Another	1	\$1,710.00
Unemployment Insurance Benefits	63	\$134,528.29
<b>Grand Total</b>	<b>66</b>	<b>\$138,374.29</b>

<b>Garnishment Collection Summary</b>	
1 <sup>st</sup> Quarter 2014	\$93,420.41
2 <sup>nd</sup> Quarter 2014	\$95,646.65
3 <sup>rd</sup> Quarter 2014	\$58,111.36
4 <sup>th</sup> Quarter 2014	\$62,560.79
<b>Grand Total</b>	<b>\$309,739.21</b>

**In FY2014, the CLA Criminal Practice Team:**

- Filed 193 criminal cases
- Obtained 160 criminal sentences
- Obtained restitution orders totaling \$702,829.92
- Collected \$726,089.60 in restitution prior to sentencing
- Obtained orders in fines totaling \$14,240.00
- Obtained orders for 6,541 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 Hours</b>
Combination Case	10	2	\$6511.88	\$4,006.00	\$200.00	80
Food Stamp	9	5	\$8,791.00	\$14,559.00	\$800.00	50
Unemployment Insurance Benefits	174	153	\$687,527.04	\$707,524.60	\$13,240.00	6411
<b>Grand Total</b>	<b>193</b>	<b>160</b>	<b>\$702,829.92</b>	<b>\$726,089.60</b>	<b>\$14,240.00</b>	<b>6541</b>



**TOM HORNE**  
ATTORNEY GENERAL

**OFFICE OF THE ARIZONA ATTORNEY GENERAL**  
**ADMINISTRATIVE SERVICES DIVISION**

**DEBBIE JACKSON**  
DIVISION DIRECTOR

**FY2014 ANNUAL REPORT**  
**APPENDIX F**

**1. DESCRIPTION OF THE DIVISION**

**History:**

In 2008, the division formally known as Administrative Operations Division was reorganized. A portion of the former Division was moved to Finance and the remaining sections were renamed the Employee Services Division. In 2011, a reorganization occurred under the Horne Administration, with a focus on comprehensive and centralized operations. The Employee Services Division was retitled the Administrative Services Division (ASD) and houses Facilities Management and Planning, Human Resources and Procurement. Over the past 4 years, the Administrative Services Division has successfully 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 (PRO). 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: centralized services in shuttle transportation, mail room operation, main building receptionist functions, electronic imaging, 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. The section strives to provide high quality customer service to all prospective, current and past employees. Human Resources supports all vital personnel functions and specifically focuses on five business areas that 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.

- Management of personnel actions, assistance and auditing: to process personnel actions, questions and requests efficiently and consistently while auditing for cost savings and compliance.
- Skilled consultation: to provide expertise in the areas of research and personnel policy development, employee relations, performance management, and benefit program information.
- 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 Section (PRO) is responsible for direct contracting and purchasing goods and services as well as management of service contracts for the office. The Procurement Section endeavors to provide high professional procurement standards including:

- Equitable treatment of all citizens;
- Complying with all AZ State procurement statutes and rules;
- Effective procurement strategies to support agency goals and maximizing the value of public monies.

## **2. RESPONSIBILITIES AND ACCOMPLISHMENTS**

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

#### **Centralized Services:**

- |  |  |
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| <ul style="list-style-type: none"> <li>• Badging</li> <li>• Conference Room Set-up</li> <li>• Copy Center Services <ul style="list-style-type: none"> <li>✓ Black/White, Color Copy</li> <li>✓ CD/PDF Scanning</li> <li>✓ Special printing projects</li> <li>✓ Plastic &amp; Wire Binding</li> </ul> </li> <li>• Equipment Moves</li> <li>• Floor Plan Maintenance &amp; Space Mgmt</li> <li>• Mail Room <ul style="list-style-type: none"> <li>✓ Certified Mail</li> <li>✓ Pick-Up &amp; Delivery</li> </ul> </li> <li>• Parking Garage Assignment</li> </ul> | <ul style="list-style-type: none"> <li>• Receptionist Service</li> <li>• Security Service</li> <li>• Telephone <ul style="list-style-type: none"> <li>✓ Audits for staff turnover disconnection cost savings</li> <li>✓ Audit for billing accuracy</li> </ul> </li> <li>• Telephone &amp; Maintenance Work Orders</li> <li>• Tenant Improvement Projects</li> <li>• Transportation <ul style="list-style-type: none"> <li>✓ Agency Shuttle</li> <li>✓ Courier Service</li> <li>✓ Fleet Vehicle Coordinators</li> </ul> </li> <li>• Work Order invoice audits for cost savings</li> </ul> |
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#### **Major Accomplishments from 2011 through 2014:**

- Badging: Assumed responsibilities of badging services to coincide with building management. New badging equipment for improved quality of badges for identification of employees.
- Building Floor Maps: Created new building maps with clear identification of employees, position, phone numbers, and funding.
- Disaster Recovery/Emergencies/Safety Committee:
  - Created building evacuation plans and hung evacuation tags for office doors.
  - Created Safety Teams and detailed instructions for the office personnel to follow in the event of an emergency/evacuation. Provide regular training for safety committee members and issued radios to all floor wardens. Distributed emergency quick reference cards to all employees and safety equipment for team members.
  - Installed crowd control barriers to direct visitors for increased security.
  - Maintain the emergency hotline for staff to contact to receive up to date information during an emergency.
- Facilities Customer Service:
  - Established a Facilities dedicated email and phone line.
  - Cross trained staff to complete all functions and duties. On-site supervisor put into place to oversee workflow of copy center, mail room and shuttle.
  - Expanded Services in Copy Center (binding, laminator, date stamping for incoming court documents, request form updates, electric letter opener, electronic certified mailing, and

- standardized mailing label).
  - Expanded Shuttle service to include a new route for the Durango courts.
  - Coordinated a daily courier run to CFP Van Buren Office for mail delivery and pick up.
- **Records Retention:**
  - Introduced centralized records retention process to agency.
  - Development of records retention policy and procedure for paper and electronic records (draft).
  - Initiated an electronic imaging for records retention.
  - Processing Pre-Disposition Release Notices.
- **Space Planning and Tenant Improvement Projects:**
  - Evaluation of agency space for additional storage options.
  - Completion of Wire Tap Room project.
  - Flood recovery: Management of personnel temporary relocations, records retrieval, equipment salvage and building repairs after the Law Building flood.
  - Restricted mailroom/copy room access for security of mail and confidential documents.
  - Repurposed modular furniture to create an efficient workspace for mail room and copy center.
  - Audio/Visual Equipment installed for press box equipment.
  - Various tenant improvements for office space efficiency and accommodating of employees.

### **3. RESPONSIBILITIES AND ACCOMPLISHMENTS**

#### **Human Resources Section:**

##### **Centralized Services:**

- Auditing of routine personnel reports and progress checks for required annual reports
- Benefits, Retirement, Alternate Transportation and Wellness options
- Compensation, personnel, and position records and reports
- Maintains consolidated Agency announcements for recruitment (AGO website, State Bar of AZ, AZ Attorney Magazine, APAAC, ASU, Phoenix School of Law, UA, social media sites)
- Employee relations (FMLA, Retirement, LWOP, LTD, STD, Disciplinary, ADA, etc.)
- Electronic Time Entry (ETE)
- Employee Recognition Program
- HRIS personnel actions entry
- Law Clerk/ Intern/Volunteer Program
- Leaves of Absence
- New Employee Orientation (Bi-Weekly)
- Organizational chart
- Public Information Requests
- Representation of Agency at statewide meetings and trainings for all personnel related topics
- Recruitment/Hiring Process (REQ/PDQ, Announcements, Reference/Background Checks, On-Boarding)
- Statewide initiatives
- Temporary employment options
- Training – Employee and Supervisor
- Worker’s Compensation claims

##### **Annual Projects:**

- Affordable Care Act benefit review for temporary employees
- Annual leave carryover and special accruals
- ASRS health/dental reimbursement (Bi-Annual)
- Compensation comparisons for disparity amongst attorney, legal support, and special agent staff
- Benefit Open Enrollment
- Employee Awards Ceremony
- Employee personal information and Mass Communication updates
- Employment poster updates in common areas
- Equal Employment Opportunity reporting and strategic plan
- Form/template updates for calendar and fiscal year
- Goal Reports - Annual Report, Master List and Strategic Plan
- Grant Questionnaires and Compliance Training
- Managing Accountability and Performance (MAP) Appraisal Process
- Monitor legislative changes that effect personnel
- PSPRS cancer insurance program reporting and invoice payment
- SECC Campaign
- Surveys – NAAG, Risk Exposure Survey, Think Pink, Employment Engagement Survey
- Worker’s Compensation Reporting (OSHA)
- Year End updates (Labor distribution changes for funding; temporary employee invoice processing; PSR updates)

## **Major Accomplishments from 2011 through 2014:**

- **Budget:** Implemented monthly budget meetings with Division Chiefs and ASD Director and partner with Budget group on budget matters relating to positions and employees. Keep all funding updated in HRIS and org charts.
- **Delegation of Authority:** Partnered with ADOA to receive agency delegated authority under the new personnel reform compensation guidelines.
- **Disaster Recovery/Emergencies:** Created an emergency agency phone number and act as a point of contact with facilities for evacuation occurrences assisting with evacuations and providing employee information during the evacuation.
- **Employee Intranet:**
  - In 2011, revamped current intranet (Link AG) HR information page to include targeted information for all employees and monitor for changes.
  - In 2013, assisted with development and transitioned all information to new employee intranet (Sharepoint). Manage most content and updates on intranet.
- **Employee Recognition Program:** Produced annual awards ceremonies. In 2014, incorporated new Meritorious Service Leave for select award winners. Developed then implemented a new Employee Recognition Program that includes alerts to recognize outstanding employee efforts, a monthly drawing, a recycling program and spirit shirts.
- **Employee Time Entry:** Deployed and transitioned all employees from paper timecards to the Electronic Time Entry system.
- **Exit Process:** Expanded the exit process to include supervisors and all operational service groups to ensure employee's departure is appropriately processed and to manage agency security.
- **FMLA / Leave of Absence and ADA:**
  - Established a consistent process for identifying, requesting, notifying, approving and tracking FMLA /Leave of Absence and ADA requests through HR for consistency. HR manages communication with employees, Division Chiefs, Section Chiefs and Supervisors, payroll and procurement to ensure confidentiality and communicate timely and appropriate information.
  - Effectively executed the transition of manual logging of FMLA entitlements to an electronic tracking module in HRIS.
  - Established a consistent process for identifying, requesting, notifying, approving and tracking FMLA /Leave of Absence requests through HR for consistency. HR manages communication with employees, Division Chiefs, Section Chiefs and Supervisors to ensure confidentiality and communicate timely and appropriate information.
- **Hiring Process:** Partnered with ADOA to receive agency delegated authority for creating new positions, hiring, internal promotions/transfers and other personnel actions. Centralized and streamlined steps for efficient and thorough completion including:
  - Hiring process policies
  - Electronic requisition initiation
  - Electronic hiring packet files
  - Instructions for hiring Supervisors
  - Standard announcement postings
  - Resume review and tracking
  - Interviewing instructions and guidelines
  - Structured selection and interview process for attorney candidates via attorney Hiring Committee
  - Facilitate applicant selection process
  - Partner with Budget and EXO for all hiring / promotions
  - Conduct Reference checks
  - Manage and administer background check process for all applicants Temporary employee hiring process established. Assumed the role of conducting more thorough first level background checks with new software for increased security during recruitment process.
  - Process offer and new hire paperwork
  - The Attorney General personally extends offers of employment and promotion
  - Developed and maintained Attorney Candidate Pool (Immortal List)
  - Post generic legal job announcements to monthly publication "Attorney Magazine" that is distributed to all attorneys licensed in AZ
- **HRIS ("Human Resources Information Solution" the state's personnel database):**
  - Implemented process, department and supervisor level changes in HRIS to increase organizational efficiency.

- Gained additional access and training for HR staff members to manage and enter comprehensive personnel information and changes.
  - Discontinued use of duplicate personnel database (CMS).
  - Partnered with ADOA to implement agency specific feature in HRIS.
- HR Customer Service:
    - Established a dedicated HR email and phone line that is managed by a HR staff member.
    - HR Staff cross trained to complete all HR functions and duties with a buddy system for back up and continuous service.
    - Survey of HR performance for client satisfaction for hiring supervisors and Training participants.
  - HR Electronic Filing Systems: Created and organized all electronic files into a centralized network drive and paper files into one centralized room.
  - HR Processes and Procedures:

All personnel and position actions centralized for consistency, effectiveness and timeliness.

    - Created procedural checklists, templates and letters for all internal HR processes and events facilitated by HR including: ADA Requests, Address Changes, Annual Leave Carry Forward Requests, Awards Day, Background Checks, Classification Actions, Benefit Open Enrollment ,CLE Credit, Closed Pending Files, Conflict of Interest Disclosure, Electing Covered to Uncovered, Death of EE or Dependent, Disciplinary Actions, Drop Program (PSPRS), EEO Plan, EEOC Notice of Charges, End of Limited Appointment, End or Extension of Probation, Equipment Move, Ergonomic Evaluations, FMLA/LOA, Footprints, Garnishments, Grievances, Hire Approval, HR Audits, HR Reception, Intern/Volunteers, Intra-agency Transfer, Name Change, New Hires, Org Chart Reconciliation, Org Chart Change, OSHA Reports, Payroll Funding Transfer, Position Description Actions, Posting Announcements, Cancer Insurance Program Billing (PSPRS), Local Board Meeting Notice Posting (PSPRS), Public Information Requests, Public Records Redaction, RASL, Requisition, Salary Adjustments, Secondary Employment/ Volunteer Activities Notification, Temporary Services, Terminations, Wellness Events and Worker's Compensation.
    - Created logs to track personnel actions for new employees, terms, non-paid employees, classification actions, temporary employees and transfers, non-FMLA leaves, employees with special annual leave carry over, EEO complaints, evaluations, covered employees becoming uncovered and return to work retirees.
  - Integration:
    - Child and Family Protection Division - Centralized CFP all employee personnel actions and HR functions to the agency HR team for integrated services, and working with the funding agency (DES) to smooth operations.
    - Tucson Office - Integration of all Tucson employee relations and office operations through the Phoenix HR staff members for consistency and efficiency.
    - Game and Fish Employees – Facilitated the transfer of AGO employees who were legal representation for the Department of Game and Fish to AGO positions for consistency and smooth operations.
  - Intern and Volunteer Program: Centralization of the programs in order to promote interest and accessibility for applicants, and to standardize the agency's process.
  - New Employee Orientation: Developed in depth and structured New Employee Orientation for all offices and divisions every pay period.
  - Collaborative Fellowship Program: In partnership with the Chief Deputy and Division Chiefs, developed a program to facilitate recruitment of attorneys to public service. Agreement with local law schools (ASU/U of A/AZ Summit) to hire recent law student grads upon passing of the bar exam with a one year commitment with opportunity to turn into a regular appointment. School pays \$40,000 for each candidate for 1 year.
  - New Administration Transition: Successful transition of Elected Official's operations and staff.
  - Organizational Charts: Established and maintain office wide org charts to track all agency employees and positions. Audited and updated monthly.
  - Performance Appraisal Process:
    - In 2012, recreated evaluation to reflect agency goals/vision and to be consistent amongst covered and uncovered staff across divisions. Attorney Evaluation revamped to include division chief suggestions.
    - In 2013, implemented the statewide performance management tool "MAP". Trained all supervisors in new evaluation system and managing performance.
  - Personnel Reform: Successfully implemented statewide initiatives based on Personnel Reform. Managed extensive revisions to policies and procedures, templates, forms, letters, performance appraisal process and tools, training, positions, reclassification of IT positions and compliance reporting for the agency.

- Policies and Procedures:
  - Created and implemented agency wide policies and procedures in order to apply consistently across the agency and promote professionalism. Notification and routing of all updated policies and procedures to current employees. Assist with updates of the AZ Agency Handbook as needed.
  - Produce Compensation Plan each fiscal year as required by Personnel Reform.
- Reports:
  - Developed standard reports and audit and/or complete various reports for the agency including: Administrative Services Division Strategic Goals Report (monthly); AGO Website Report (Annual); City/County Compensation Comparisons (Annual); EEO Reports and Plan (Annual); Emergency Contact Report (Annual); Leave of Absence Comparisons; Leave Roll Over Report tracking (Annual); LTD Claims Activity report (monthly); Maps of Office (monthly); Org Chart Review; OSHA Reports (Annual); Pay Period Payroll Reports (bi-weekly); Pending Position Actions Report per Division (weekly); Personnel Reports (administrative reports, salary, employee rosters, classification, grade, position, funding) bi-weekly; Position Reports (funding, salary, vacant); and Reports Upon Request (attrition, personnel reform, return retirees, status term dates, supervisor codes, ETE proxy, etc.).
  - Standard reporting to ADOA as required by Personnel Reform.
- Talent Acquisition: Transitioned agency internal recruitment sourcing actions to new statewide application. Managing the customization and deployment of additional program modules for the hiring process and onboarding at the AGO.
- Temporary Employees: Created process to obtain temporary employees until permanent employees could be secured to avoid work stoppage due to attrition or during an uptick of work.
- Training and Development: Standardized for all employees in all locations and divisions and track for compliance. Facilitated the availability of a computer based public service orientation (ethics) training for elected officials that the AGO is statutorily required to provide.
- Worker's Compensation: Process centralized and managed systematically with Risk Management, the employee, the supervisor, facilities and payroll.

#### **4. RESPONSIBILITIES AND ACCOMPLISHMENTS**

##### **Procurement Section:**

##### **Centralized Services:**

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• Cellphone Administrator</li> <li>• IFB (Invitation for Bid)</li> <li>• Negotiate Terms/Quote prices for goods and services</li> <li>• P-Card/Travel Card/Central Travel Account Administrator</li> <li>• Pre-proposal conferences</li> </ul> | <ul style="list-style-type: none"> <li>• ProcureAZ Administrator</li> <li>• ProcureAZ Training</li> <li>• Request for Grant Application (RFGA)</li> <li>• Request for Proposal (RFP)</li> <li>• Request for Quotation (RFQ)</li> <li>• Reviewer/Signer of all contracts and agreements for the AGO</li> </ul> |
|---|---|

##### **Recurring Projects:**

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• COMP OBJ &amp; NIGP Code Report (SharePoint) (as needed)</li> <li>• Interagency Service Agreements - Legal Services (annually)</li> <li>• Ricoh Multi-Function Device Service Agreement (annually)</li> <li>• Purchase Order Processing (continuously)</li> </ul> | <ul style="list-style-type: none"> <li>• ADOA Unlimited Competition Report (quarterly)</li> <li>• Legal Workers Act Contractor Compliance (quarterly)</li> <li>• Administrator Rights for Purchasing Card, Travel Card Central Travel Account Verizon Wireless/AT&amp;T</li> </ul> |
|--|--|

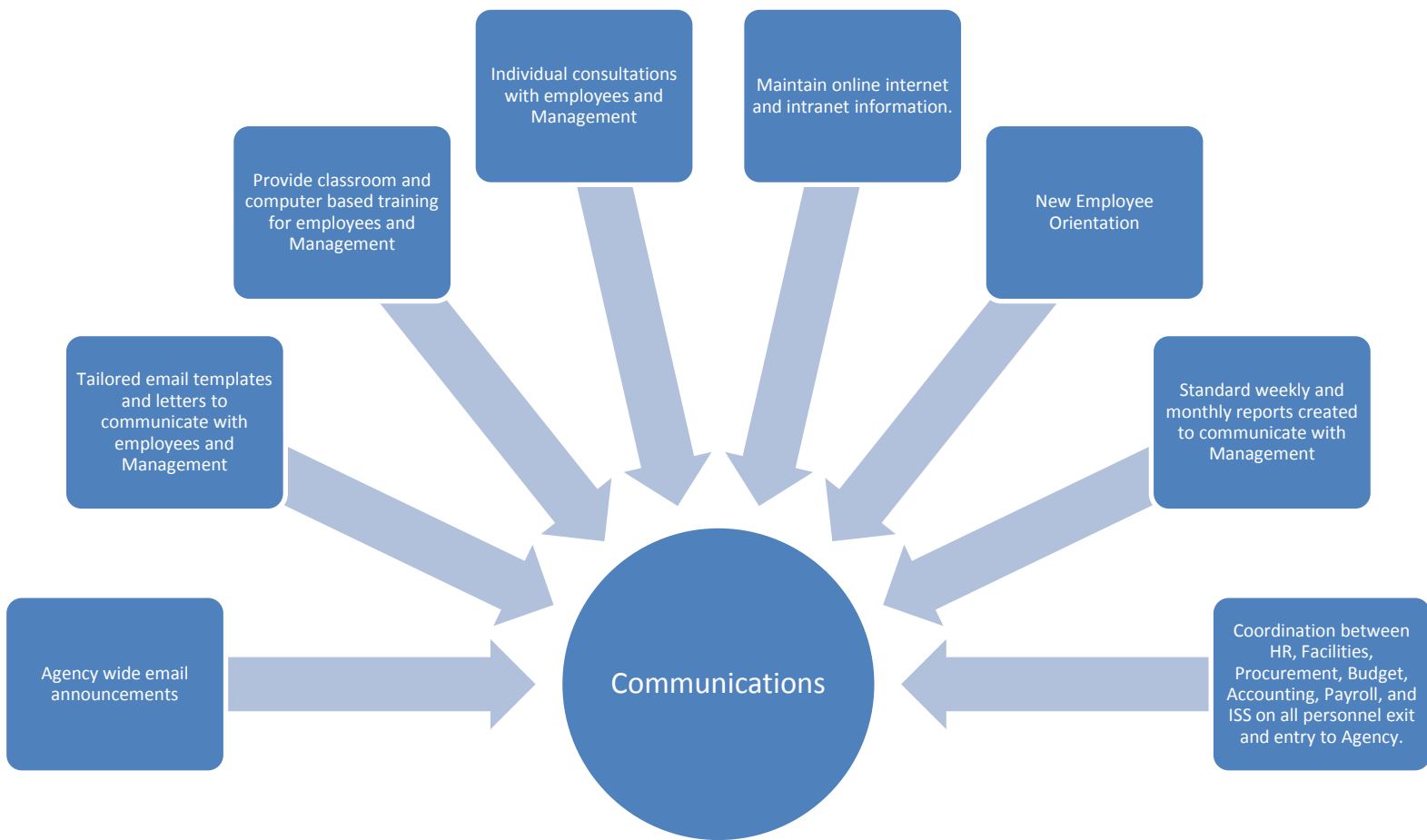
##### **Major Accomplishments from 2011 through 2014:**

- Contract / Lease Negotiations:
  - Westlaw Contract
  - Tucson Lease for LMS
  - Security Services Contract
- Delegated Authority: Negotiated and received unlimited delegation of authority.
- Interagency Service Agreements (ISA): Agency ISA's reviewed and updated annually.
- Office Equipment Negotiations/Solutions:



- Modular furniture re-purpose vs. purchasing new.
- Replaced approximately 8 old copy machines reducing monthly maintenance while increasing the features available in the copy machines.
- Reduced the number of “convenience” printers.
- Outside Counsel: State Contract Administrator.
- Policies: Drafted pilot policy to pay cost of I-Pad applications for attorney use.
- Procurement Customer Service: Established a dedicated email that is managed by a procurement staff member.
- RFP’s Awarded:
  - Air Conditioning Maintenance and Service (FY14)
  - Certified Court Reporter Services
  - Consultant for Childhood Obesity Prevention
  - Gasoline and Diesel Price Survey (FY12, FY13, FY14)
  - Law Enforcement Rifles/ Accessories
  - National Mortgage Settlement Distribution (Housing Education & Counseling Services, Legal Services Organizations, Job Training, Fund Administrator, Claims Administrator, Housing Education & Counseling Services, Loan Program/AZ Mortgage Relief Fund, Veterans Assistance, Relocation Assistance, ASU Interagency Services Agreement)
  - Outside Counsel General Services (FY11, FY12, FY13, FY14)
  - Outside Counsel Other (NAU, Patano Wash, Oregon, Arizona State Forester, ADOT, Risk Management Tire Fire)
  - Printing Projects (OVS Training Brochures, Abuse, Neglect, Exploitation of the Elderly Brochures, Fair Housing and Employment Brochures, Senior Tool Kit, GCC Family Booklet, ID Theft Brochures, Top Consumer Scam Booklet, TASA Booklet, Internet Safety Brochures, Printing Smart Senior Brochure)
  - Tobacco Enforcement Monitoring Software
- Staff: Expanded procurement staff to manage increasing demands of procurement services.

## 5. COMMUNICATIONS



## **6. COST SAVINGS (2011 - 2014)**

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

- Auditing records management inventory invoices monthly.
- Badge Savings (\$2,549).
- Carpet installation and Break room update after flood.
- Electronic Certified Mailing Process Savings (\$5,750).
- Fleet Vehicles – Monthly audit of Voyager card charges and vehicle mileage for CFP vehicles.
- General Office and Common Area improvements (~\$10,000).
- Partnered with ADOA to obtain necessary equipment and materials for creating employee badges without incurring additional expenses.
- Recycling program of cans/plastics in the offices (proceeds contributed to Employee Recognition Program).
- Repurposing of left over cubicles coordination with procurement (~\$1,500 savings per cubicle).
- Seized Vehicle Parking (~\$1,800) to give back to victims. Partnered with ADE to house vehicles.
- Telephone Audits for Agency Cost Savings (\$4,818).
- Transition of Phoenix Building Security to private organization for increased security and coverage.

### **Human Resources Section:**

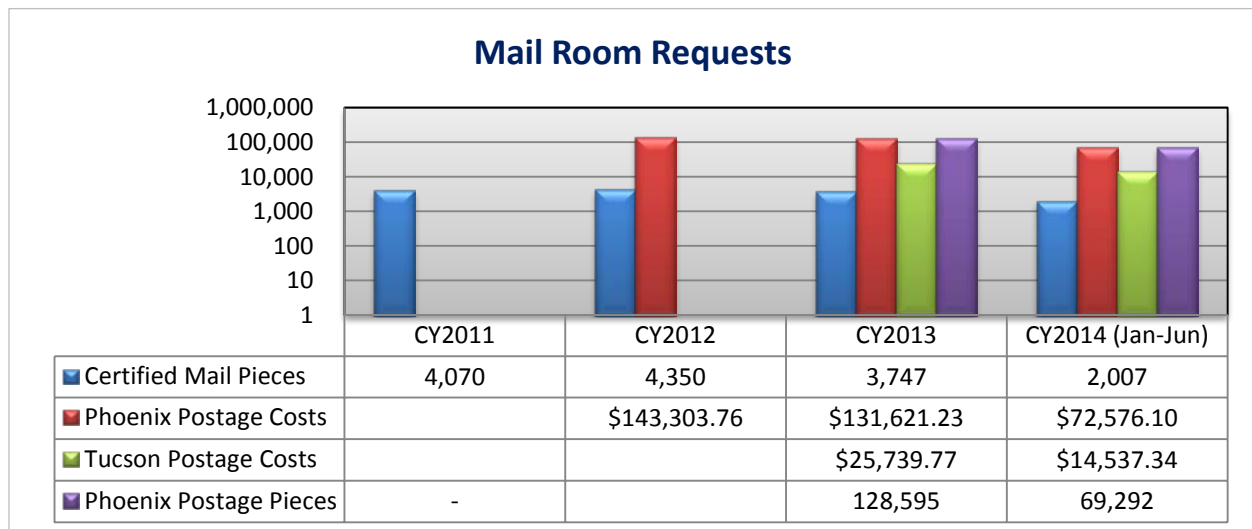
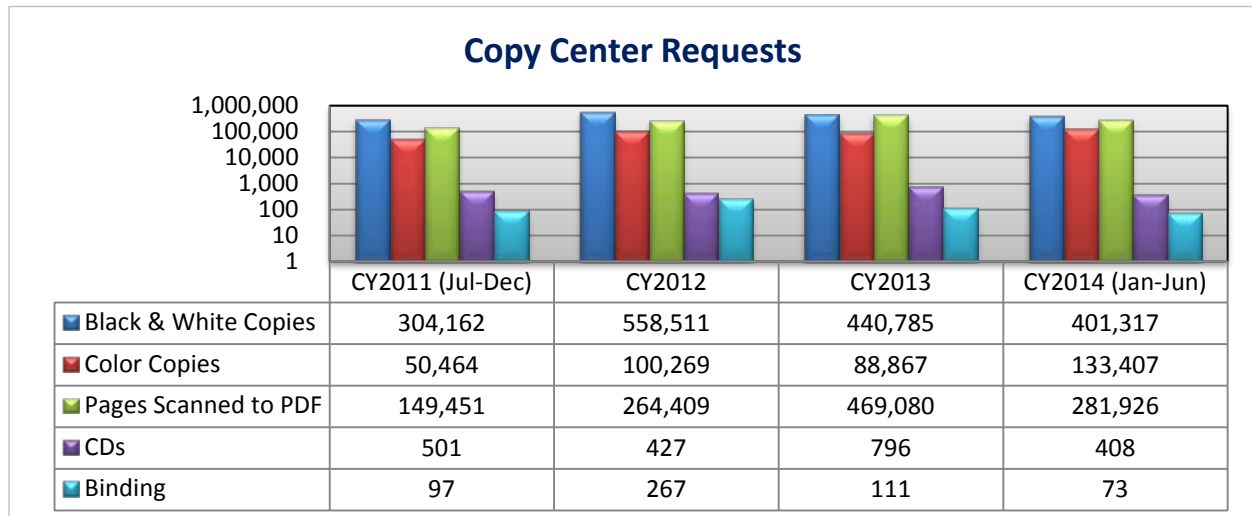
- Centralized employee services.
- Collaborative Fellowship Program (\$440,000).
- Maintain resume database for attorneys, paralegals, law clerks, or attorney volunteers.
- Managing intermittent and continuous leaves of absence to balance employee and Agency needs.
- Monitor ASRS enrollments, 20/20 rules, Alternate Contribution Rate (ACR) to avoid penalties.
  - Recovery of ACR over payment in collaboration with BFD (\$145,058 annually for three years).
  - Potential ACR penalty annual savings (up to \$18,324).
- Monitor civic duty hours, temporary employee assignments, and overtime hours.
- Monitor industrial leave claims and leave of absence benefit premiums to avoid Agency over payment.
- Promote Benefits and Wellness programs to maintain statewide low cost benefit premiums.
- Review bi-weekly pay period reports for cost savings measures and personnel actions.

### **Procurement Section:**

- Modular furniture re-purpose vs. purchasing new (~\$1,500 savings per cubicle).
- Security Services - DPS vs. Blackstone Security (\$75,275 / year).
- Tucson lease negotiation for LMS (\$33,797 / year).
- Westlaw Contract Negotiation (\$86,040 YTD).

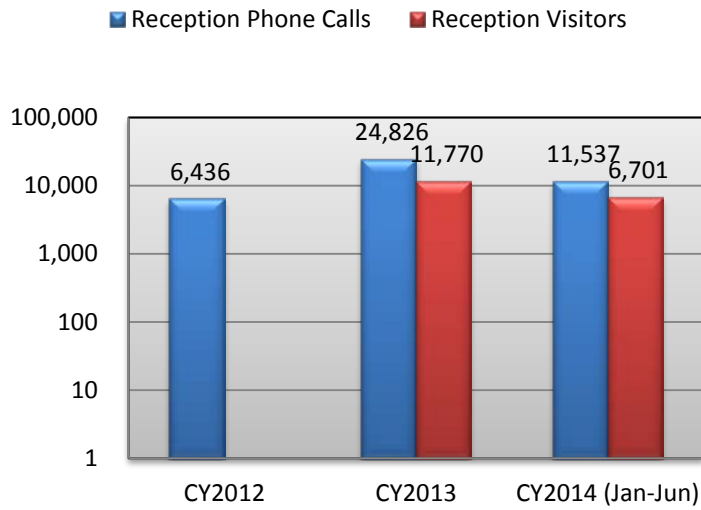
## 7. PRODUCTIVITY STATISTICS

### Facilities Management and Planning Section:

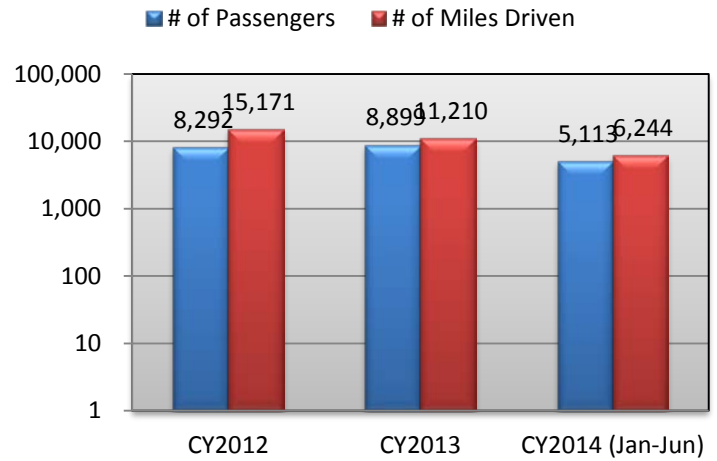


**Facilities Management and Planning Section:**

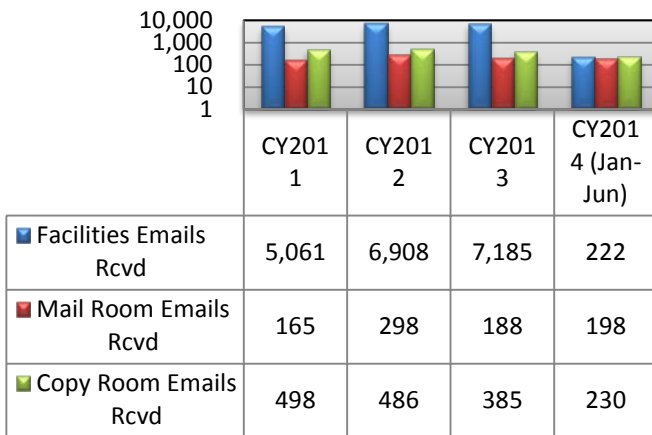
**Reception Desks (Cap/Law)**



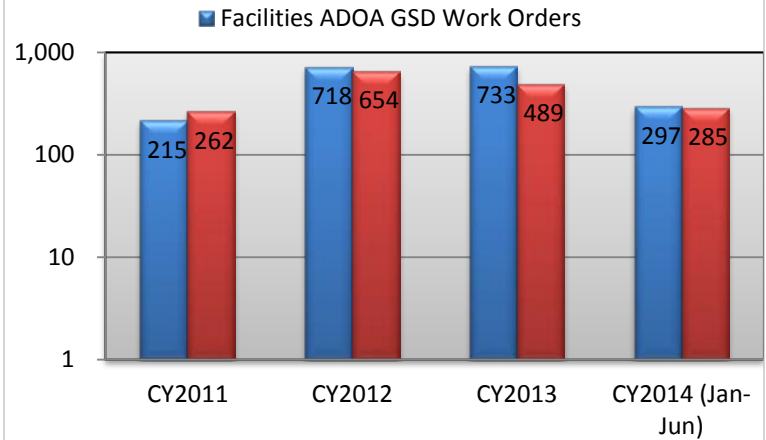
**Shuttle Log**



**Email Inquiries**

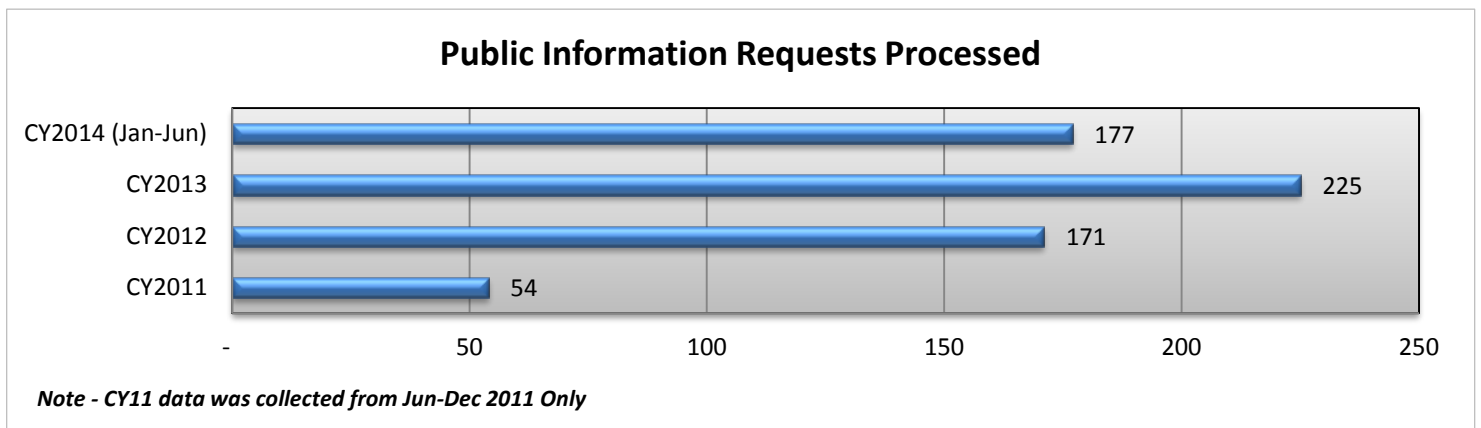
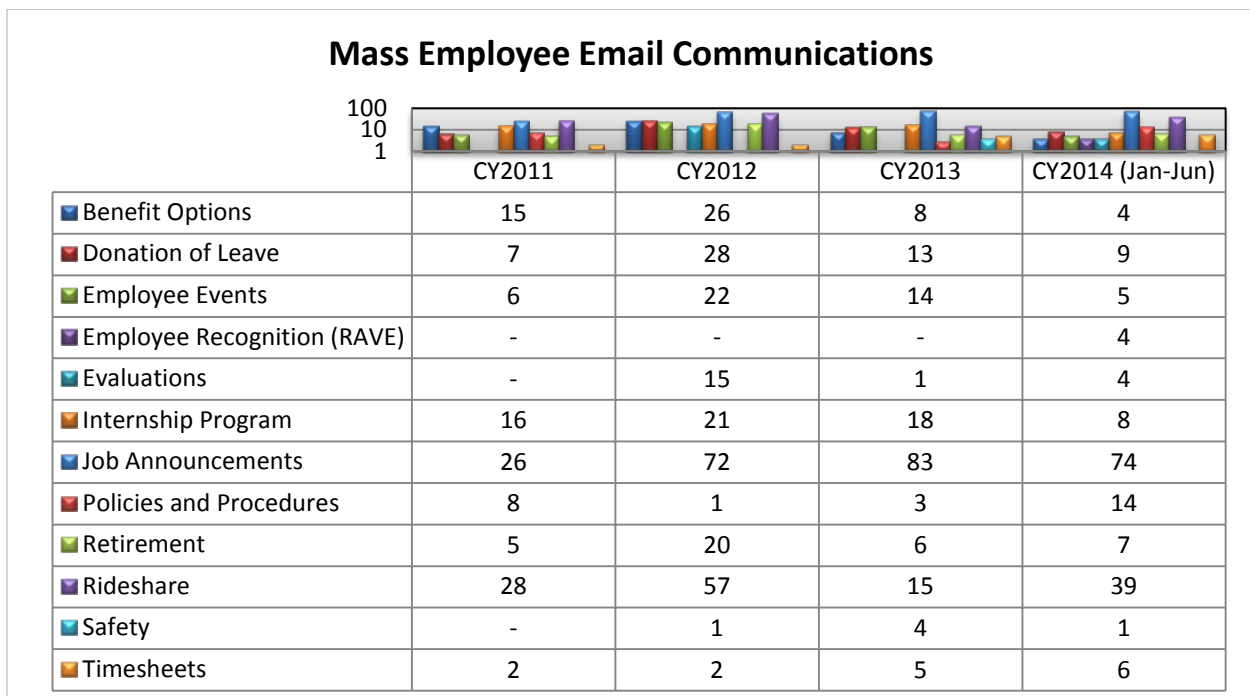
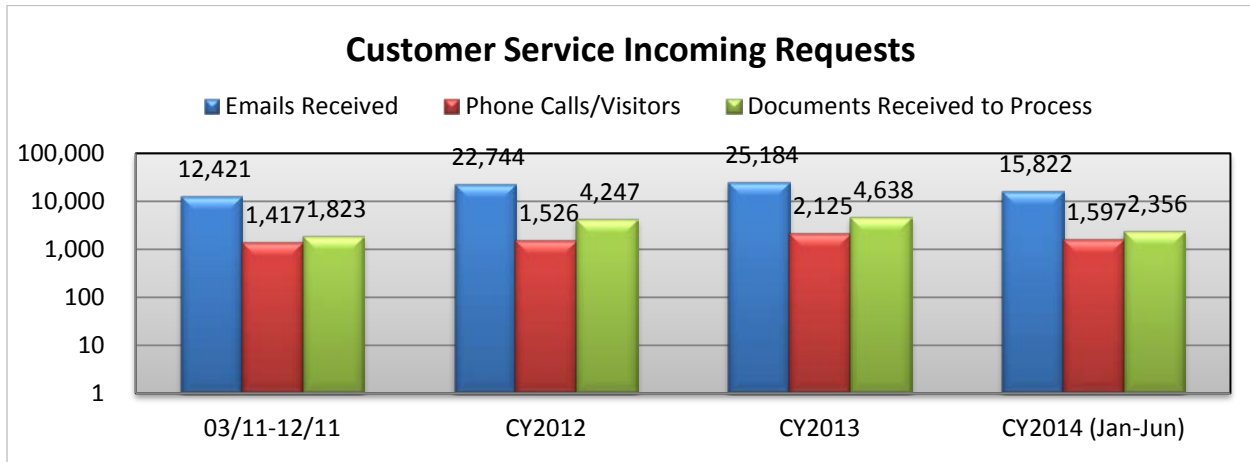


**Work Orders**



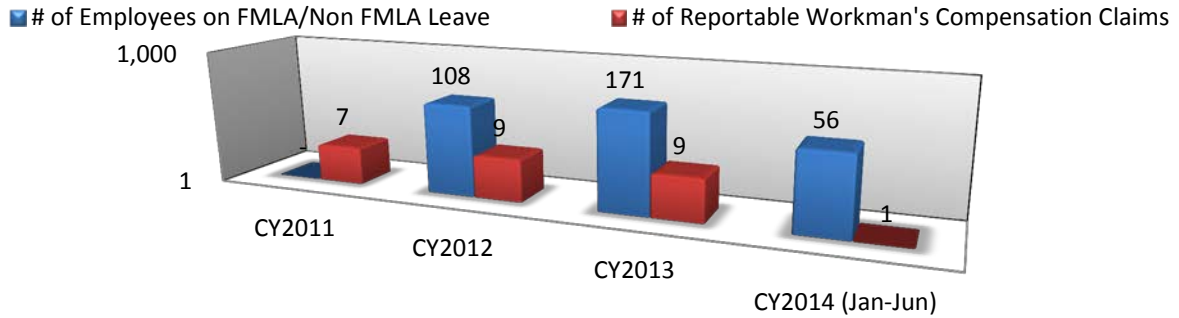
## 8. PRODUCTIVITY STATISTICS

### Human Resources

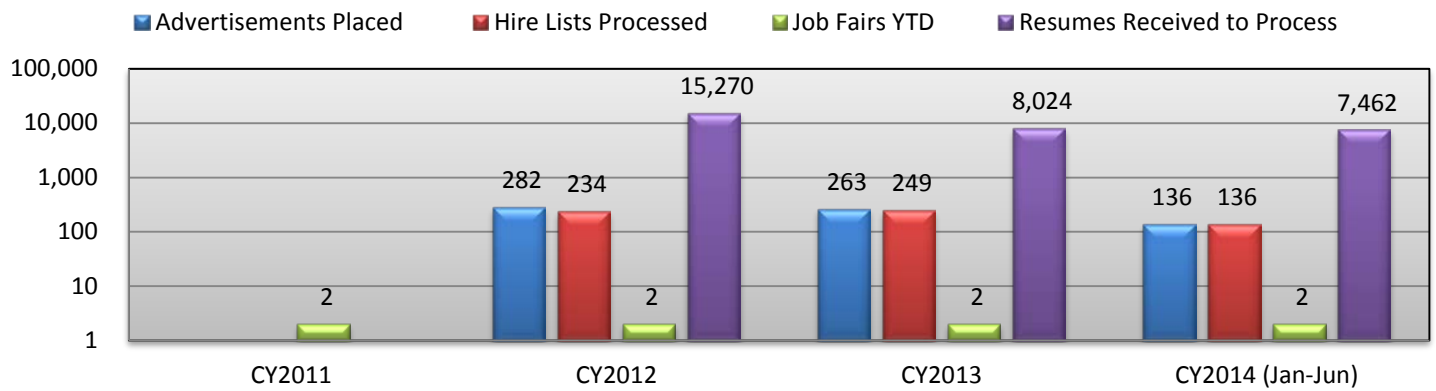


## Human Resources

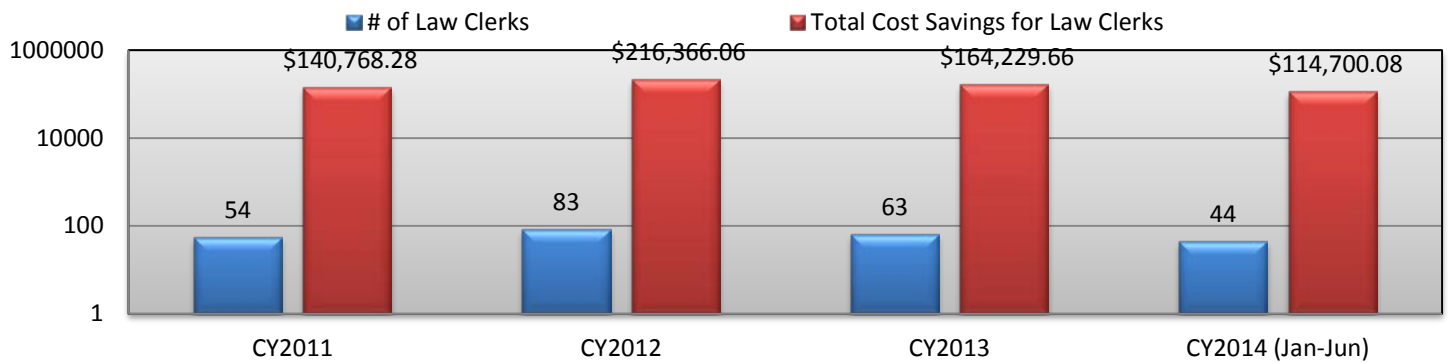
### Medical Cases Processed



### Recruitment

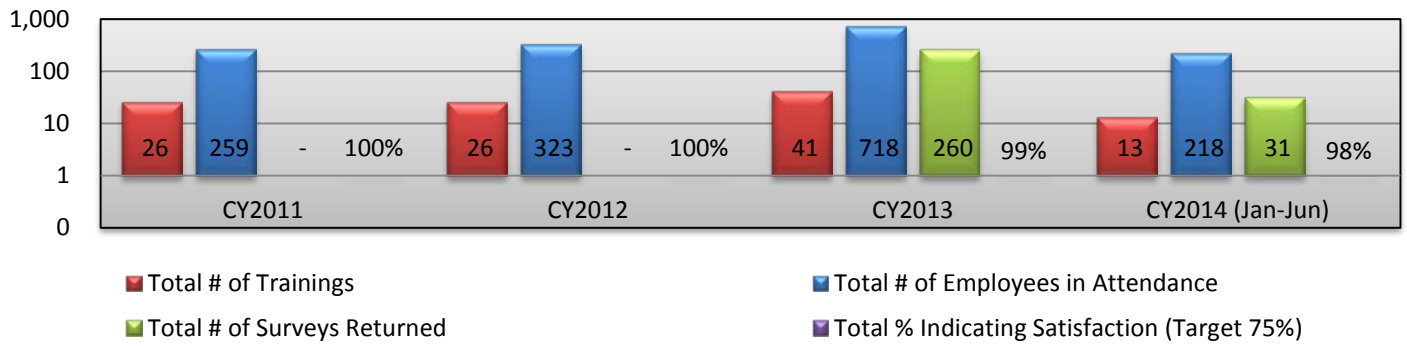


### Intern & Volunteer Program

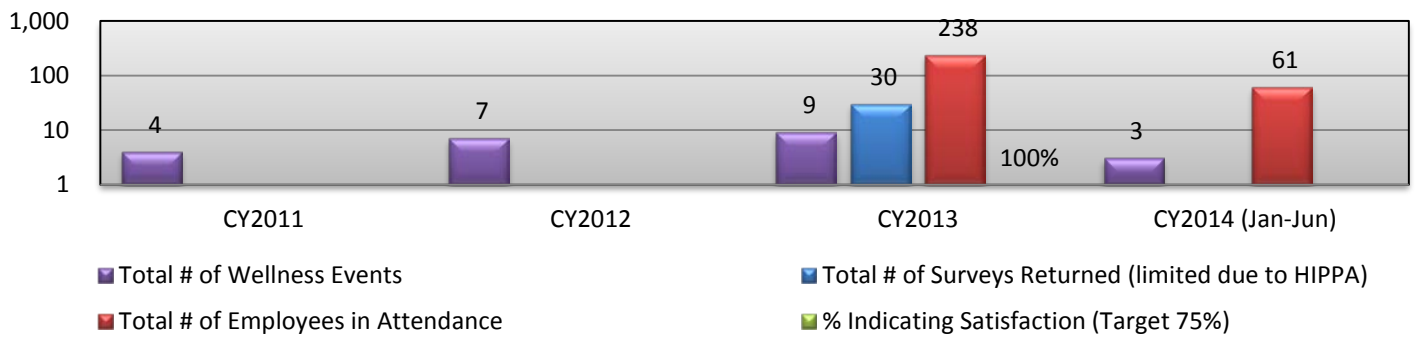


**Human Resources**

**HR Training & Percent Satisfaction**



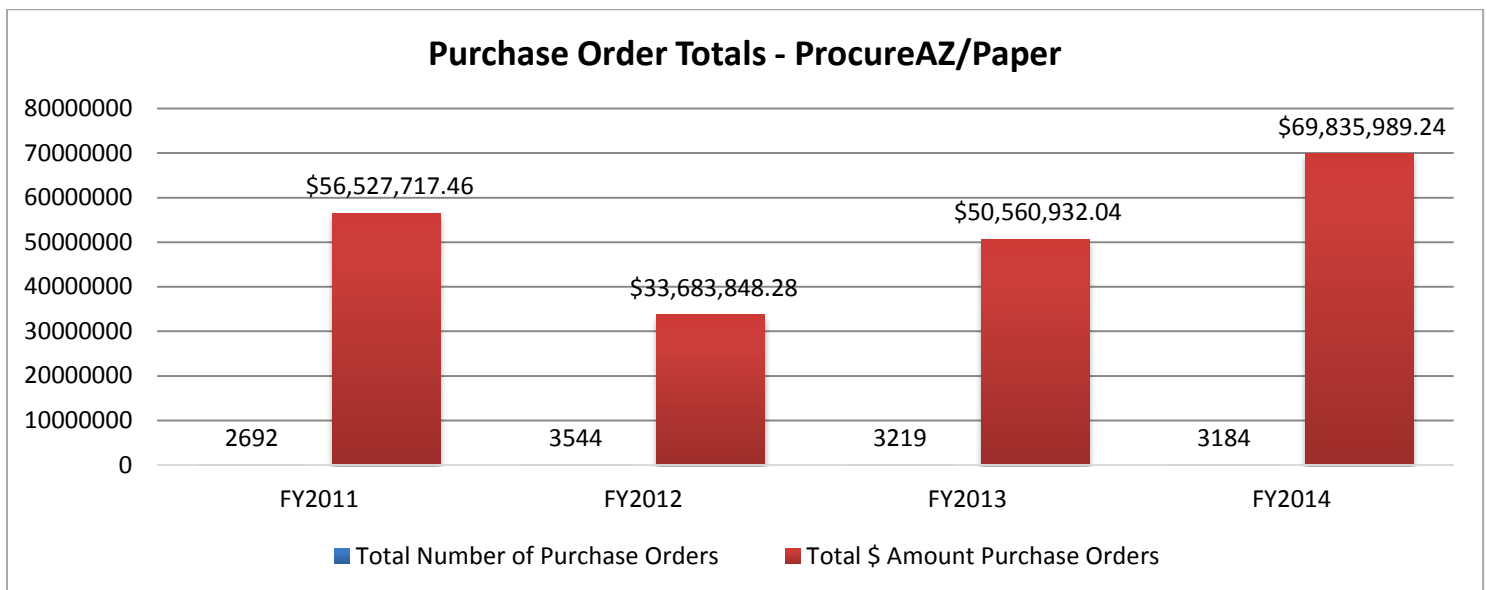
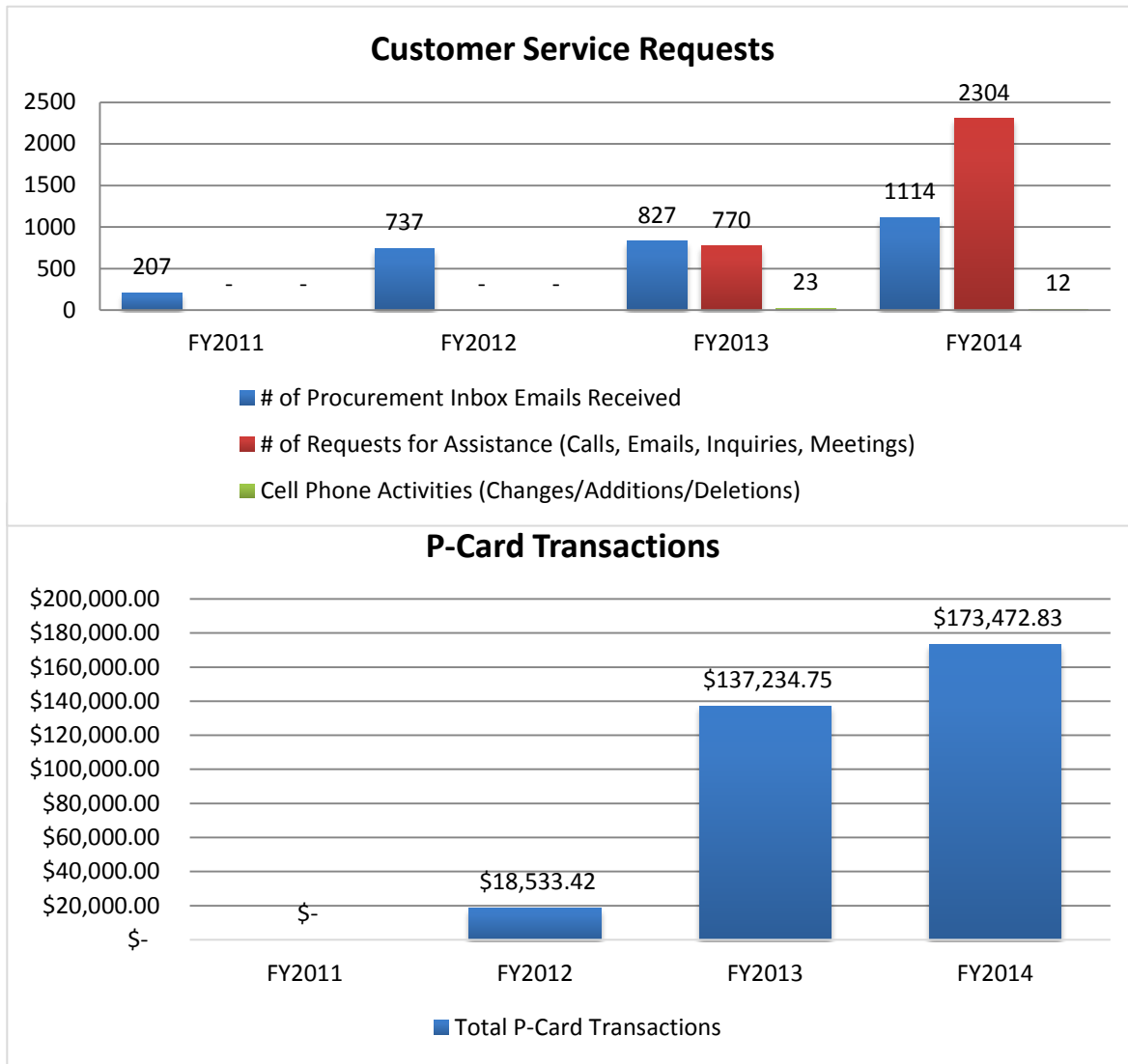
**HR Events & Percent Satisfaction**





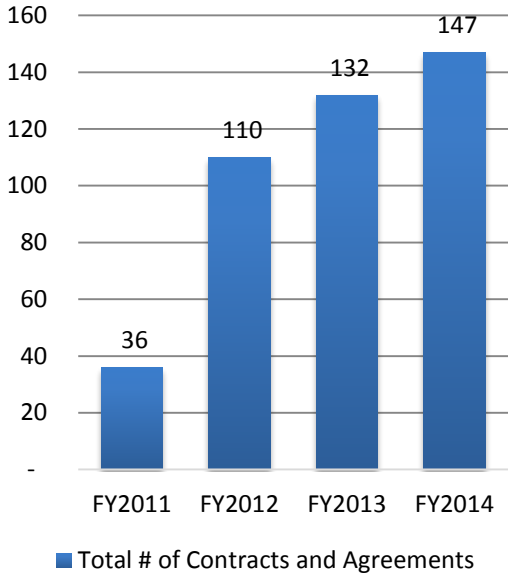
## 9. PRODUCTIVITY STATISTICS

### Procurement

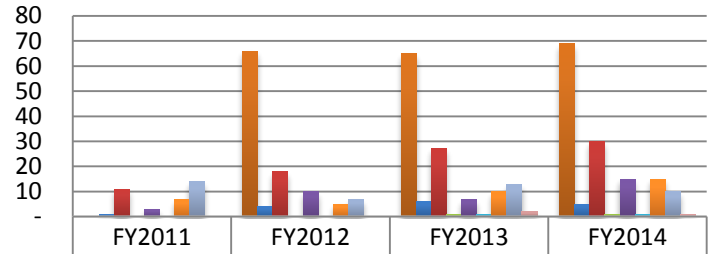


**Procurement**

**Total # of Contracts & Agreements**

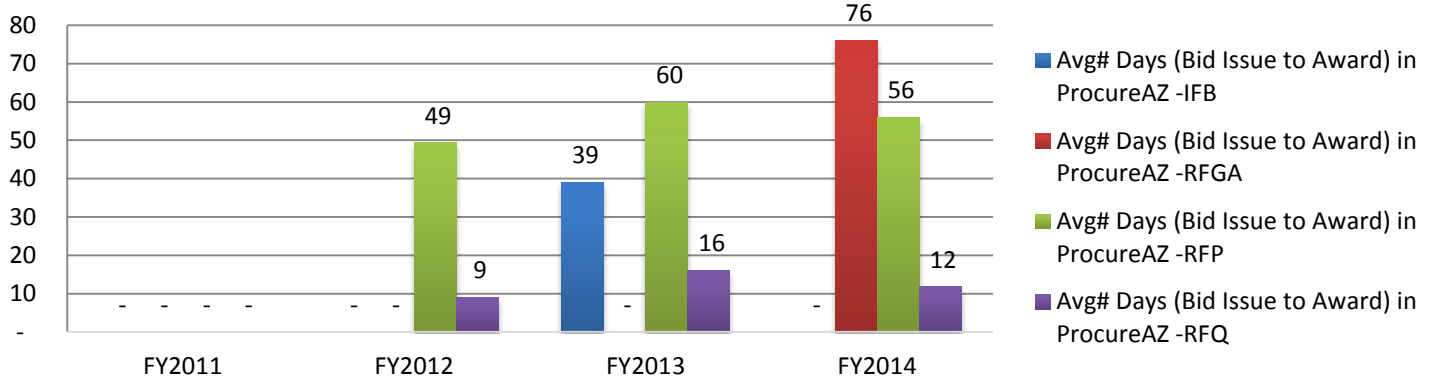


**Contracts & Agreements - Breakdown**

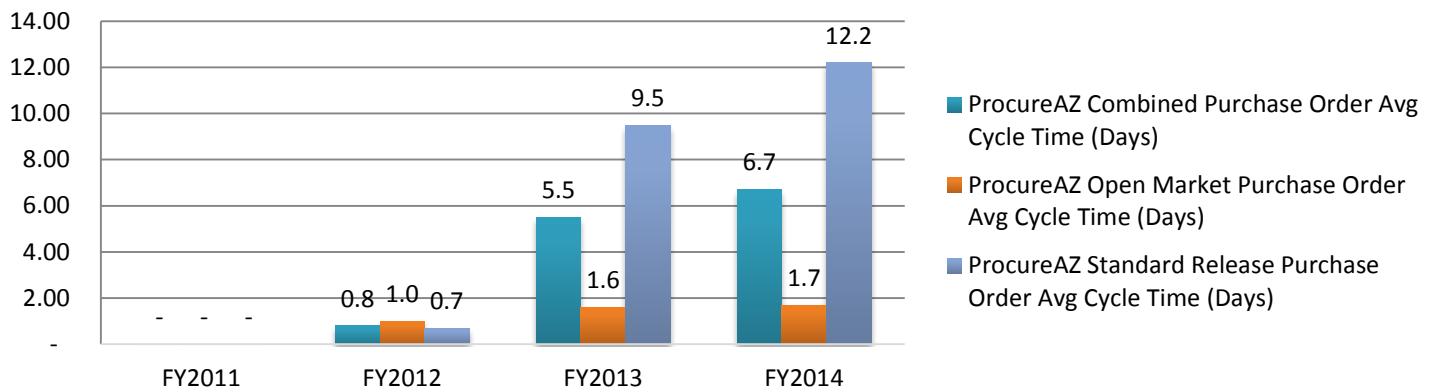


Category	FY2011	FY2012	FY2013	FY2014
ISA/IGA Cumulative	-	66	65	69
Additional ISA/IGA	1	4	6	5
Agreement	11	18	27	30
IFB	-	-	1	1
NPQ	3	10	7	15
RFGA	-	-	1	1
RFP	7	5	10	15
RFQ	14	7	13	10
Grant	-	-	2	1

**Effectiveness & Efficiency in ProcureAZ - Bids**

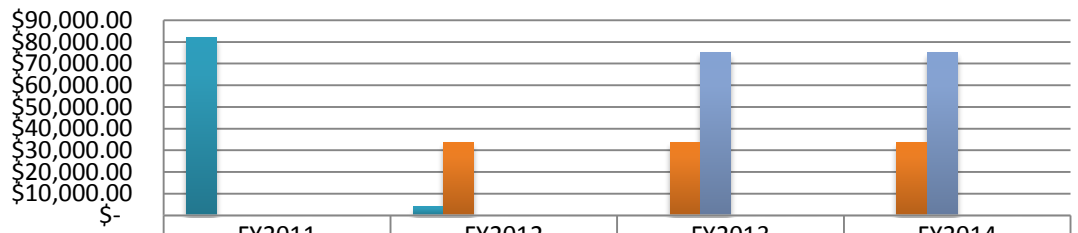


**Effectiveness & Efficiency in ProcureAZ - Purchase Order Avg Cycle Time**



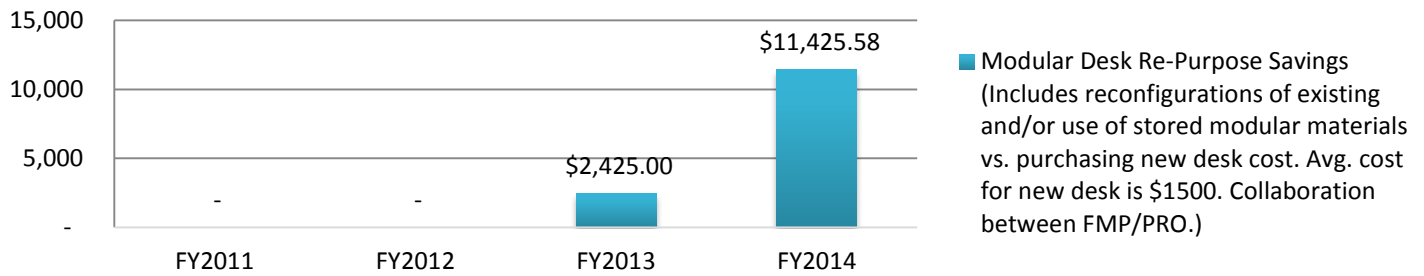
**Procurement**

**Contract Negotiation - Cost Savings**

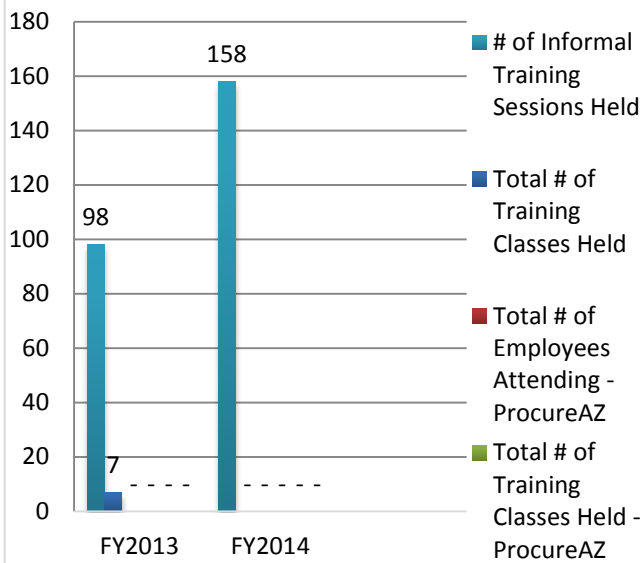


	FY2011	FY2012	FY2013	FY2014
Online Legal Research: Lexis Nexis vs Westlaw	\$81,924.00	\$4,116.00	-	-
Tucson 5yr Lease: CIV/LMS (Negotiated 04/12)	-	\$33,797.00	\$33,797.00	\$33,797.00
Security: DPS vs Blackstone (Negotiated 09/12)	-	-	\$75,276.00	\$75,276.00
Cox Cable TV/Receiver Disconnection (08/14)	-	-	-	-
Riestler Contract Negotiation (09/14)	-	-	-	-
Open Market Purchase Order Savings	-	-	-	-

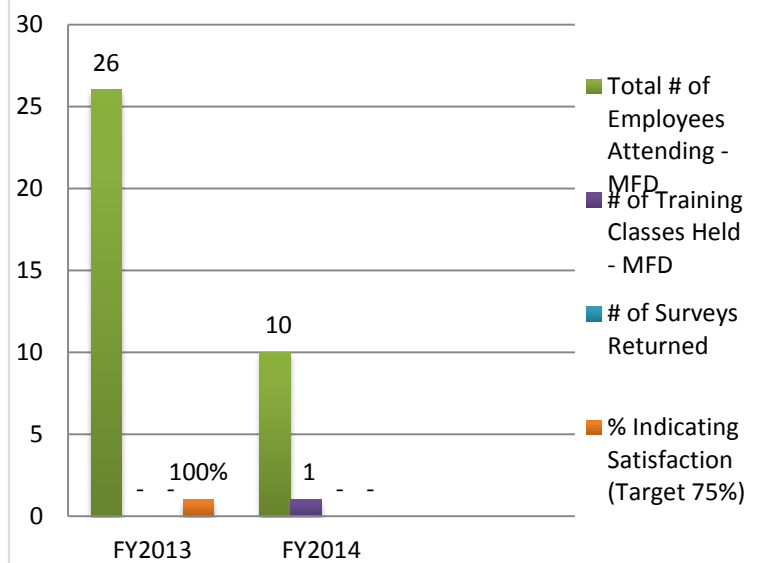
**Modular Desk Re-Purpose Cost Savings**



**Training - ProcureAZ**



**Training - Multi-Function Device**





**TOM HORNE**  
ATTORNEY GENERAL

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

**VICKI SALAZAR**  
DIVISION DIRECTOR

**FY2014 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 FY2014, BCE's net collections on behalf of the State were \$18.8 million, which is a 20% increase over the previous fiscal year. Some significant collections included:

- \$3,019,101 on behalf of the Department of Administration in the W.R. Grace & Co.-Conn bankruptcy case,
- \$785,263 on behalf of the Department of Revenue in the Mesa Air Group, Inc. bankruptcy case,
- And \$650,000 on behalf of the Department of Revenue in the American Color Graphics Inc. bankruptcy case.

## **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 FY2015 funding for the following budget issues:
  - Increase in funding of \$300,000 for Capital Postconviction Prosecution
  - Continuation of AHCCCS funding of \$1,200,000 for plus an increase in funding of \$600,000 Tobacco Settlement Litigation and Enforcement Costs. Total funding \$1,800,000.
  - Increase in General Fund appropriation of \$1,000,000 and 12 FTE positions for additional legal representation growth in the Department of Child Safety
  - Increase the Collection Enforcement Revolving Fund appropriation of \$1,500,000 and 11 FTE positions for debt collection expenditures.
  - Increase the Interagency Services Agreements (ISAs) Fund appropriation of \$1,300,000 and 11 FTE positions for expanded ISAs.

## **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 FY2014 the Grants Management Section worked closely with the Criminal Division, Community Outreach and Civil Rights to renew, maintain, and support 15 federal, state and private funded grants. Collectively, these grants support 61.55 FTEs and provide funding over \$2.5M.
- The Grants Management Section actively pursues additional AGO grant opportunities. The Grants Management Team works with the sections to research, apply, and submit grant applications, offering program funding for agency needs.

## **Travel Unit**

The Travel Unit provides centralized travel services to the AGO for all In-State and Out-of State travel needs. The Travel Unit has developed AGO Policy and Guidelines and works daily with the agency staff to ensure compliance with AGO and State requirements.

- During FY2014 the Travel Unit has centralized all AGO travel services offering: booking flights, research hotels, answering all policy questions, tracking and processing travel related reimbursement claims.
- The travel coordinator provides travel training to new hires at the time of new hire orientation, more in-depth training on a semi-annual basis and individual training on an as needed basis.
- The travel coordinator organizes, tracks, and processes all travel reimbursement claims. Ensuring claims are prepared accurately and reimbursements are timely.

## **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: tracks encumbrances, inbound invoices, employee reimbursement 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:*

- BREAZ: Spearheaded the Business Re-Engineering Arizona (BREAZ) project for the Attorney General's Office. BREAZ is a statewide initiative to transform Arizona's

business processes and replace the State's current accounting system (AFIS). The goal of the project is to modernize the State's accounting system, and standardize business processes across the state. This will lead to consistent policies and procedures and support stronger internal controls and uniform skill sets across the state. The system is scheduled to be implemented in Fiscal Year 2016.

- Financial Remedies Section Distribution Calculations: The property management area of Financial Remedies Section (FRS) completes distributions of liquidated forfeited assets to law enforcements agencies (LEA) which involves gathering sharing percentages for LEAs, and ensuring all income and expenses have been accounted for. FSS has taken on this responsibility to help FRS focus on its core business and allow for cross-training amongst several individuals to ensure there is no disruption in these distributions.
- Debt Collection Scoring: FSS assisted BCE in identifying key populations to target for collection efforts by creating various reports that categorize debtors based on their ability to repay including the debtor's property, judgments, and their LexisNexis Recovery Score. Recover Score leverages LexisNexis's vast databases and independent public records, focusing on contactibility and stability profile of a debtor to help quantify the probability of collection.
- PowerPCS: Budget commenced a new program, Power PCS which will assist in controlling and monitoring budgeted positions throughout the agency. The Program will maintain organized data and eliminate the probabilities of human error and inaccuracies. Power PCS will detect variances between budgeted positions versus actual activity inputted into Human Resources Information Solution (HRIS) to assure that the agency's cost meet the legislative budget guidelines. PowerPCS offers reporting mechanisms that will allow users to generate several reports based on business needs, including reconciliations to assure funding ability and easily detect shortages. PowerPCS is in its final implementation stage and is expected to go live October 2014.



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**COMMUNITY OUTREACH AND EDUCATION**

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OUTREACH AND EDUCATION

**FY2014 ANNUAL REPORT**  
**APPENDIX H**

**COED Overview 2014**

The Community Outreach and Education Division participated in over 500 community events and presentations this year all throughout Arizona. These events include information booths at civic gatherings, schools, health fairs and neighborhood block watch meetings and educational presentations given to schools, professional groups and seniors on such topics as: internet safety for children and parents, anti-bullying for children and parents, substance abuse prevention, consumer scams, identity theft, life care planning, senior abuse, human trafficking, and victim's rights. In the last year Community Outreach Coordinators have spoken directly to more than 77,000 Arizonans on the above-mentioned topics. In addition to speaking engagements and setting up information booths, Community Outreach is responsible for constituent inquiries that come through by phone or our Crime Fraud email. In the past year our Division has helped address the issues of roughly 2,900 Arizona citizens who reached out to our office with questions, concerns, or needing help.

**Grant Funded Programs**

**Governor's Office of Child, Youth and Family**

In July of 2013 the Governor's Office for Children, Youth and Families awarded the Arizona Attorney General's Community Outreach and Education Division a \$152,840 grant to implement a statewide drug education and prevention program for parents called Guiding Good Choices. In collaboration with the Pima Prevention Partnership, the Community Outreach and Education Division worked jointly to improve parenting skills, create awareness and help to prevent prescription drug, illegal drug, and alcohol abuse in Arizona families. In the past year, the Community Outreach and Education Division traveled statewide conducting two hour parent workshops over a five week course. The workshops utilize lecture, video, interactive activities, question and answer, and home practice. Each session teaches a different approach that will create a healthier family dynamic and alerts parents to risk factors and how they can prevent substance abuse and other problem behaviors within their own homes.

The Community Outreach and Education Division increased the recruitment and retention of workshop participants through the use of promotional material funded by the grant, such as pencils, notepads, water bottles, coffee mugs. The Community Outreach and Education Division reached 190,555 Arizona constituents regarding the Substance Abuse Prevention Program. A total of 266 Arizona residents have received the Guiding Good Choices program. KMXR Radio(96.9 FM) in coordination with the Community Outreach Division created a public service announcement campaign with announcer Mathew Blades called the "Blades Brigade." The message raises awareness about youth substance abuse throughout the state and alerts parents to the Guiding Good Choices program. In addition we have developed many other successful partnerships for programming were established with Mesa Public Libraries, Mesa Family Resource Center and many Arizona school districts. The Community Outreach and Education Division formed a strong relationship with the Native American population by conducting the Guiding Good Choices



workshops in the Navajo Nation. As a result of the hard work of the staff, the Governor's Office for Children, Youth and Families has approved a second year of funding for the same amount of \$152,840 in the fiscal year of 2015.

### **Internet Crimes Against Children**

In the past year Community Outreach was fortunate to receive a renewal of our Internet Crimes Against Children taskforce grant, with the award of \$15,000.00. With this grant we are able to continue updating and printing our Internet Safety for Children and Parents booklet which are distributed at schools and PTO events around the State. This year we have given out more than 35,000 copies of our Internet Safety for Children and Parents publication which is full of relevant information for keeping your children safe on the internet. Community Outreach Coordinators have directly spoken to over 37,000 students, parents and teachers this year, participating in 279 Internet Safety events.

### **Internal Initiatives**

#### **Human Trafficking**

In the past year Community Outreach and Education has been involved in bringing awareness to combat the crime of human trafficking in our state. By being a member of the Governor's Arizona Human Trafficking Council we were able to effectively develop a coalition-based strategy for reducing human trafficking in Arizona. One of the key components being HB 2454, a bill which our office supported that increased penalties for traffickers and those soliciting in an effort to reduce demand. Community Outreach organized viewings at local movie theaters of two documentaries about human trafficking, *Chosen* and *Tricked*, throughout the past year to further educate constituents about this issue. Community Outreach has also been involved in efforts to train hotel staff, the general public, faith-based organizations, and Super Bowl Volunteers to spot the red flags of human trafficking ahead of the upcoming Super Bowl, Pro Bowl, and other sporting events. The Arizona's Not Buying It campaign is another tool being used to raise awareness by producing public service announcements to be aired on television, radio, and billboards featuring local celebrities with the message that Arizona is not open for business to human trafficking. Community Outreach Director, Kathleen Winn, has spoken to more than 5,000 Arizona citizens in the past year about human trafficking.

#### **TASA**

The Task Force Against Senior Abuse (TASA) over this past year has seen dramatic changes and successes due to their Community Outreach efforts by providing 71 presentations to more than 2700 professionals in the healthcare industry. In 2014, the Community Outreach targeted four key groups in the healthcare industry for engagement and training: (i) large medical provider staff; (ii) home healthcare provider organizations; (iii) large private industry groups; and, (iv) geriatric medical doctors. Each group has significant interaction with the senior population. The training and education these groups received was focused on common types of senior abuse such as physical and financial. As part of the training, each individual received a copy of the Senior Tool Kit, a brochure that gives guidance on the various types of abuse and exploitation. The tool kit was created in 2014 after the Attorney General's Office was awarded the Sears Multistate Settlement Consumer Protection and Education Grant in the amount of \$35,500.

Additional efforts to combat elder abuse were strengthened with the collaboration of the following advisory boards among others: Governor's Council on Aging and Legislative Council; Area Agency on Aging; Statewide Elder Abuse Coalition; Western Agency Council of Governments; Northern Agency Council of Governments.

## **Anti-Bullying**

In August of 2012 the Arizona Attorney General's Community Outreach Division launched its first Anti-Bullying initiative. An Anti-Bullying presentation was created for 4th – 8th graders and parents 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. For FY 2014 the Community Outreach team provided approximately 44 presentations and reached approximately 3,150 students, parents and faculty members across Arizona. In addition, this office authored a monthly anti-bullying article, titled "Bully Breakers," for the publication Bear Essential News. Bear Essential News is distributed to over 550 schools in Arizona and has over 300,000 readers. The articles reached out to students and adults by providing advice and information surrounding all aspects of bullying. We continue to provide these resources throughout the state to help in eliminating bullying for Arizona students.