

OFFICE OF THE ARIZONA ATTORNEY GENERAL MARK BRNOVICH

ANNUAL REPORT  
2015



# Message from Attorney General Brnovich

Fiat Justitia – let justice be done – is the guiding principle in everything we do at the Office of the Arizona Attorney General.

As the state's law firm and top law enforcement agency, the employees of this office are committed to making a difference every day for the people of Arizona.

The following document is a summary of the FY2015 accomplishments of the Arizona Attorney General's Office. While not an exhaustive list, it provides some highlights of this past year and reports on the achievements of the divisions and sections.

I'm incredibly proud of the employees in my office. From protecting the most vulnerable and pushing back against federal overreach, to aggressively prosecuting those who wish to do harm, this report provides an overview of the impact our public servants are making in the lives of Arizonans.

It is a privilege and an incredible honor to serve as your Attorney General. Please do not hesitate to contact my office if you have any additional questions.

In absolutely every situation that arises we remain dedicated to the administration of justice.

Respectfully,

A handwritten signature in black ink that reads "Mark Brnovich". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Mark Brnovich  
Arizona Attorney General

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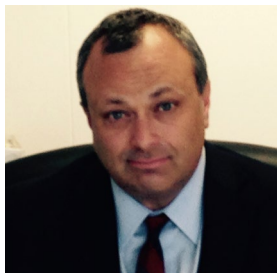
# Executive Office



*Attorney General Mark Brnovich*

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Mark Brnovich took the oath of office on January 5, 2015 becoming the State of Arizona's 27th Attorney General. Elected to a four-year term, the Attorney General is the state's chief legal officer and law enforcer. Delivering his inaugural address with his wife, daughters and mother at his side, Attorney General Brnovich swore to be faithful to the demands of justice and restore integrity to the state's top law-enforcement office.



*Chief Deputy Michael Bailey*

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Michael Bailey was appointed Chief Deputy Attorney General and Chief of Staff on January 5, 2015. He serves as the primary advisor to Attorney General Brnovich and oversees the day-to-day operations of all divisions of the Attorney General's Office.

The Attorney General serves as the chief legal officer of the State. The Attorney General is mandated by our constitution and elected to a four-year term by the people of Arizona.

The Attorney General's Office (AGO) brings and defends lawsuits on behalf of the State and prepares formal legal opinions requested by State officers, legislators, or county attorneys on issues of law. It represents and provides legal advice to most State agencies; enforces consumer protection and civil rights laws; and prosecutes criminals charged with complex financial crimes and certain conspiracies involving illegal drugs. In addition, all appeals statewide from felony convictions are handed down by this Office.

The Child and Family Protection Division provides legal services to all the divisions of the Department of Economic Security (DES), including the Division of Child Support Services (DCSS). It also provides legal services to the Department of Child Safety.

The AGO has jurisdiction over Arizona's Consumer Fraud Act, white collar crime, organized crime, public corruption, environmental laws, civil rights laws, and crimes committed in more than one county. Additionally, this Office prosecutes cases normally handled by county attorneys when they have a conflict.

The AGO is the largest law office in the State and is divided into:

- Criminal Division
- State Government Division
- Child and Family Protection Division
- Civil Litigation Division
- Solicitor General's Office
- Executive Office
- Operations Division
- Communications Division



# Communications Division



Division Director Ryan Anderson

## MISSION:

*The Communications Division provides a crucial interface between the Attorney General's Office and the state's policy makers, law enforcement, media and the general public. It reports on the agency's activities while promoting efficiency and transparency in state government."*

### Division Summary

*The Communications Division is comprised of members of the executive office who assist with legislative affairs, media relations, public information and community outreach.*

## 1ST REGULAR SESSION OF ARIZONA'S 52ND STATE LEGISLATURE

Arizona's 52nd Legislature's 1st regular session began on Monday, January 12th.. In the shortest legislative session in nearly 50 years, the legislature adjourned "sine die" on April 3, 2015 at 3:37 a.m.

During these 81 days, 1,163 pieces of legislation were introduced, with 344 reaching the governor's desk. The governor signed 324 bills into law, and vetoed the other 20 – including House Bill 2176, legislation that would have allowed the Attorney General's Office to initiate litigation on behalf of the state more efficiently. 2015 saw the highest percentage of vetoed bills since 2009. If a bill did not contain a delayed effective date, emergency clause, or receive a court-ordered injunction to delay its implementation, the general effective date for bills signed into law was July 3, 2015.

Employees of the Arizona Attorney General's Office reviewed over 1,000 pieces of legislation and the legislative team closely monitored approximately 50 bills that had a direct impact on the Office. While most efforts were dedicated to providing technical expertise and suggested amendments to bills, the Office also worked to stop a number of bills that would have had a negative or adverse impact on the Office. Additionally, the legislative team worked to help pass a number of legislative proposals that benefitted the Office.

## PROTECTING THE MOST VULNERABLE

In keeping with Attorney General Brnovich's commitment to protecting vulnerable populations, the Office promoted legislation to further support The Internet Crimes Against Children Task Force Program which helps state and local law enforcement agencies develop an effective response to technology-facilitated child sexual exploitation and Internet crimes against children. House Bill 2517 sponsored by Representative Paul Boyer was an emergency measure which established the Internet Crimes Against Children Enforcement Fund (Fund) and designated the Attorney General's Office as the administrator of the Fund. The legislation allocated, from specified lottery proceeds, \$900,000 to the Fund and \$100,000 to the Victims' Rights Enforcement Fund. Monies in the Fund will be used to hire additional investigators to locate and apprehend criminals who intentionally exploit children online.

# Communications Division (*continued*)

## PUSHING BACK AGAINST FEDERAL OVERREACH

As Attorney General, Mark Brnovich promised that he would make it a priority to pushback against the overreach of the federal government. For the first time ever, the Office was granted the authority to establish a Federalism Unit by appropriating \$1M from the Consumer Protection Revolving Fund into the new unit and adding an additional 7 FTEs. Directed by Solicitor General John Lopez, this specialized unit will provide the Attorney General's Office with the necessary resources to combat federal overreach and protect the interests of this state. Attorneys from the Federalism Unit serve as top legal advisors to the Attorney General and provide other agencies and elected state officials with insight on complex constitutional and legal matters.

## RESOURCES FOR FIGHTING BORDER-RELATED ORGANIZED CRIME IN SOUTHERN ARIZONA

Prior to FY2016 portions of the Attorney General's Tucson Office had been funded through the Consumer Protection Revolving Fund. The lack of General Fund appropriation provided a potentially volatile funding source that could have severely hampered the Office's ability to fund law enforcement activity in Southern Arizona. The FY2016 budget allocated \$1.2M from the General Fund for the funding of the Southern Arizona Drug Enforcement Unit. The General Fund investment provides a reliable funding source that places Arizona in a much stronger position to combat the violent criminals that threaten the state and ensures that legal and financial resources are available to assist in the ongoing fight against organized criminal operations and border-related crime, such as drug smuggling, weapons trafficking, money laundering, and identity theft.

## COMMUNITY OUTREACH SECTION

The Community Outreach Division of the Arizona Attorney's General Office is committed to protecting Arizona and its citizens through prevention programs and education. The Office provides valuable tools and resources for seniors, parents, schools, veterans and law enforcement. From January to August 2015 the Community Outreach Division completed 253 different statewide presentations to nearly 20,000 attendees. Additionally, Community Outreach sponsored informational tables at another 20 statewide events reaching almost another 10,000 individuals. The Community Outreach Division is available to provide presentations and education on a number of topics including: anti-bullying, consumer scams, human trafficking, ID theft, Internet safety, alcohol literacy, and life care planning. To request a presentation from the Community Outreach Division, please call (602) 542-2123, (520) 628-6504, or toll free at (800) 352-8431.

# Operations Division



Division Director Leslie Welch

## MISSION:

*In support of the Attorney General's Office, the Operations Division is a team of professionals committed to providing the highest quality internal and external customer service in the most efficient and cost-effective manner consistent with State of Arizona laws, policies, and best practices.*

### Division Summary

*The Operations Division is made up of Human Resources, Procurement, Facilities Management & Planning, Budget/Financial Services and Information Systems.*

## HUMAN RESOURCES SECTION

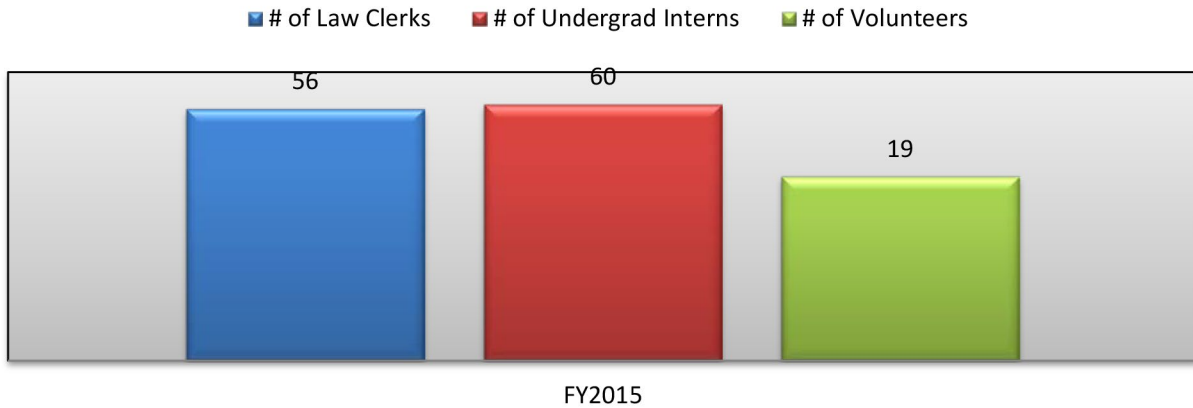
The Human Resources Section (HRS) oversees all activities necessary to develop, support and manage the Attorney General's workforce—from recruitment through retirement. The section strives to provide high quality customer service to all prospective, current and past employees. Human Resources supports all vital personnel functions, specifically focuses on management and processing of personnel actions, enforces compliance with federal and state employment regulations, recruitment, on-boarding, employee benefits, medical leave requests, accommodations and industrial injuries.

### 2015 Accomplishments

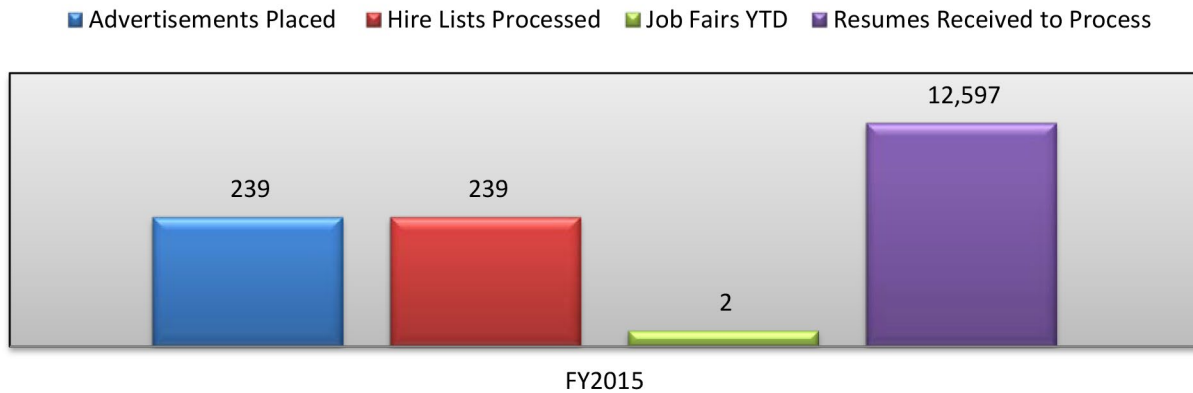
<ul style="list-style-type: none"><li>● Affordable Care Act benefit review for temporary employees</li><li>● Annual leave carryover and special accruals</li><li>● Bi-Annual ASRS health/dental reimbursement</li><li>● Benefit Open Enrollment and wellness events</li><li>● 2014 Employee Awards Ceremony</li><li>● Annual Report and Master List</li></ul>	<ul style="list-style-type: none"><li>● Grant Questionnaires and Compliance Training</li><li>● PSPRS Cancer Insurance Program reporting and invoice payment</li><li>● Worker's Compensation reporting (OSHA)</li><li>● SECC Campaign</li><li>● Internship Program</li><li>● New Administration restructuring of agency divisions in the Human Resource Information System</li></ul>
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# Operations Division (continued)

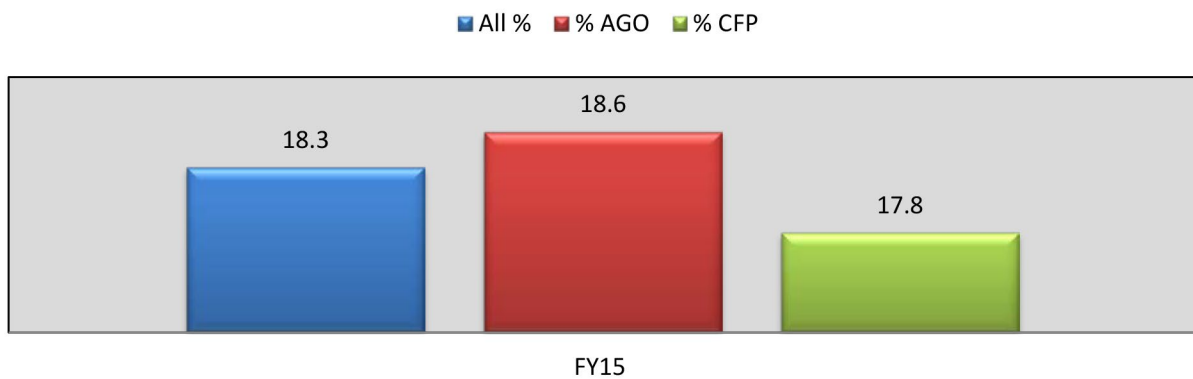
## Intern & Volunteer Program



## Recruitment



## Turnover



# Operations Division (continued)

## 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 PRO endeavors to provide high professional procurement standards including (1) a valued resource to the office providing effective procurement strategies to support agency goals and maximizing the value of public monies; (2) equitable treatment of all vendors and (3) complying with all AZ State procurement statutes and rules.

### Responsibilities

- Cellphone Administrator
- Central Travel Account Administrator
- ProcureAZ Administrator
- Procurement Services:
  - Approve All AGO purchases
  - Manage, create, advertise, evaluate and award all AGO procurement solicitations.
  - Review and Sign all contracts and Agreements for the AGO
  - Facilitate procurement processes for the AGO

### 2015 Accomplishments

- 10 major solicitations Primarily supporting the use of settlement funds
- Solicit and award the Outside Counsel Contract for Calendar Year 2015 to approximately 100 firms.

## INFORMATION SERVICES SECTION

The Information Services Section (ISS) is comprised of computer engineers, software developers, litigation support professionals, and help desk technicians. ISS is responsible for overseeing and operating the information technology and associated support services of the office.

### 2015 Accomplishments

#### **Spartan System**

SIS surveillance system with the ability to tap phone lines, cell phones, track cell phone GPS coordinates, and receive video from undercover surveillance cameras.

#### **Core Network Expansion**

A network installed to avoid monthly per port charges by Az-Net for AGO network printers and wireless access points. The project cost approximately \$34K to install and saves approximately \$138K per year.

#### **OVS Grant Management System**

A computer system installed for the Office of Victim Services to manage the disbursement and tracking of \$2.7M of Victim Rights Funds.

#### **CFP Laptops**

Purchased, configured and deployed 104 laptops to Protective Services Section attorneys at a cost of only \$330 per laptop.

## UPS Replacement

Replaced the failing battery backup system for the main AGO data center.

## Legal Files Web

Setup and deployed a web accessible version of Legal Files for the Bankruptcy and Collection Enforcement section.

## BUDGET & FINANCE SECTION

The Budget and Finance Section (BFS) is comprised of CPAs, accountants, budget control officers and other financial services professionals. The section is responsible for overseeing and running the financial operational services of the AGO. In FY15, BFS worked intensively to prepare the AGO for the implementation of the new statewide accounting system being implemented by the Arizona Department of Administration. The implementation, which began July 1, continues with great success. BFS continually strives to evaluate processes and look for efficiencies.

# Operations Division *(continued)*

## FACILITIES MANAGEMENT & PLANNING SECTION

The Facilities Management and Planning Section 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, move/furniture requests 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.

<u>Responsibilities &amp; Accomplishments</u>	
Conference Room Set-up	Parking Garage Assignment
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>	Transportation <ul style="list-style-type: none"> <li>● Agency Shuttle</li> <li>● Courier Service</li> <li>● Fleet Vehicle Coordinators</li> </ul>
Mail Room <ul style="list-style-type: none"> <li>● Certified Mail</li> <li>● Pick-up &amp; Delivery</li> </ul>	Floor Plan Maintenance & Space Management
Tenant Improvement Projects	Equipment Moves
Security Service	Telephone & Maintenance Work Orders
	Work Order Invoice Audits for Cost Savings



# Child and Family Protection



Division Chief John Johnson

## 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 370 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 resolved appeals.

### PROTECTIVE SERVICES SECTION

The Protective Services Section (PSS) of the Attorney General's Office provides comprehensive legal representation to the Department of Child Safety (DCS). The PSS shares the Department's goal of protecting abused and neglected children, providing

services to preserve families, and achieving timely permanency for Arizona's children in foster care. The attorneys and staff in the PSS provide legal representation to the DCS throughout Arizona's 15 counties with ten offices located in Flagstaff, Gila/Pinal, Kingman, Mesa, Phoenix I, Prescott, Sierra Vista, Tucson, and Yuma.

### Trial Practice

The 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 the PSS attorneys, DCS caseworkers and supervisors, members of the judiciary and various child welfare system stakeholders throughout Arizona.

# Child and Family Protection *(continued)*

## 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 FY2015, the Appeals Unit filed 170 briefs on behalf of PSS and prevailed in 97% of the PSS resolved appeals. Additionally, the Appeals Unit handled 588 substantive motions or issues and reviewed an additional 81 motions written by PSS attorneys. The Court of Appeals issued eight published opinions in FY2015 in cases that were briefed by the Appeals Unit on behalf of DCS. Six of them were affirmed in DCS's favor. The Arizona Supreme Court issued one published opinion in FY2015 in a case that was briefed by the Appeals Unit on behalf of DCS. The ruling was not 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
- Collaborating with the Indian Child Welfare Act Committee of the Arizona State, Tribal & Federal Court Forum to produce a guide to the ICWA
- Providing training to the courts on a variety of issues including, but not limited to, the ICWA
- Developing and revising forms for statewide use for all PSS attorneys through the Best Practices Committee
- Providing advice to the client and PSS attorneys on various issues, including the ICPC

## 2015 Accomplishments

PSS attorneys prepared for and/or attended 88,184 court appearances, and represented DCS in trial a total of 7,899 days in FY2015.

PSS revamped its new attorney training program reducing the initial training from six weeks to four weeks. The attorneys then return for additional training at three months and again at six months after joining the PSS. This enables attorneys to join the trial teams sooner and then return for more advanced training after they have gained some experience in the dependency practice. The PSS Litigation Support Unit trained a staggering 54 new attorneys during FY2015.



*The Protective Services Section works to protect children, preserve families and achieve permanency for children throughout the State.*

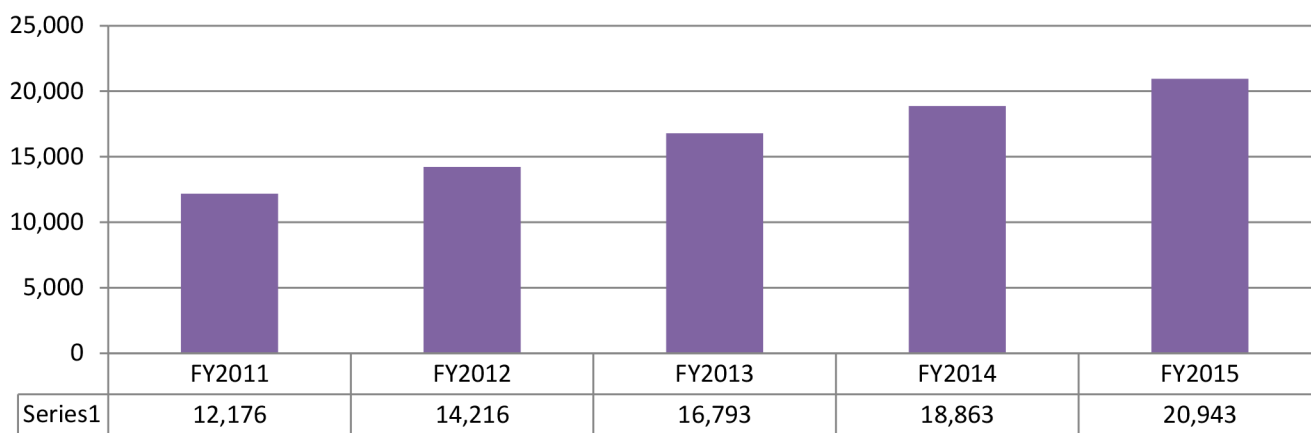


# Child and Family Protection (continued)

In FY2015 PSS attorneys and staff statewide:

- Protected more than 20,943 children from abuse and neglect<sup>1</sup>
- Filed 5,875 new dependency petitions<sup>2</sup>
- Filed 2,382 severance motions and petitions<sup>3</sup>
- Filed 319 guardianship motions
- Filed 261 adoption petitions
- Reunited 2,723 children with their parents
- Placed 494 children with permanent guardians
- Assisted in the adoption of 2,835 children by relatives or foster parents

## COMPARISON OF CHILDREN IN DCS CUSTODY FISCAL YEARS 2011 THROUGH 2015



*DCS has seen a 72% increase in the number of children in care from the end of FY2011 to the end of FY2015.*

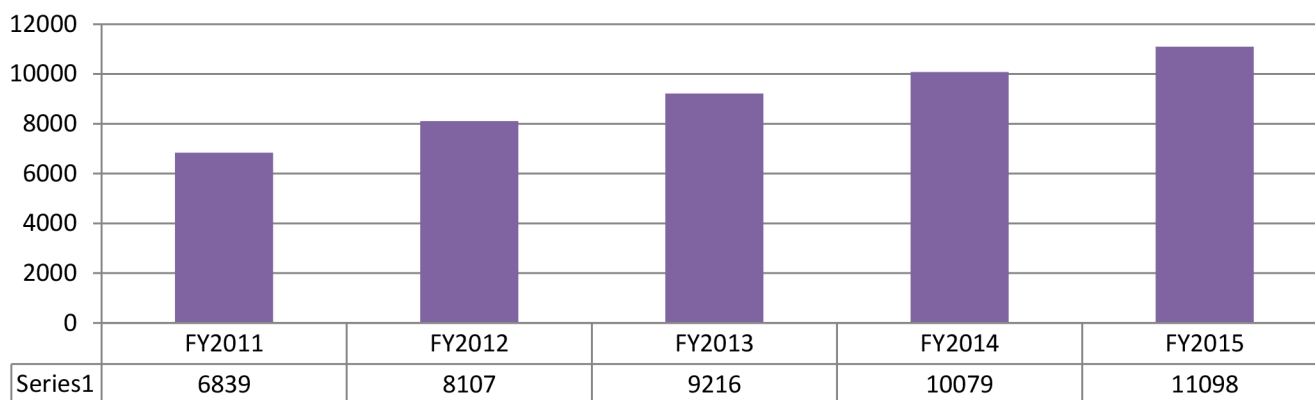
<sup>1</sup>DCS has seen a significant increase in the number of children in DCS care this fiscal year. At the end of FY2014 there were 18,863 children in care. This increased by 2,080 children to bring the number of children in care at the end of FY2015 to 20,943. This 11.03% yearly increase in the 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 577 more dependency petitions in FY2015 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. The 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.

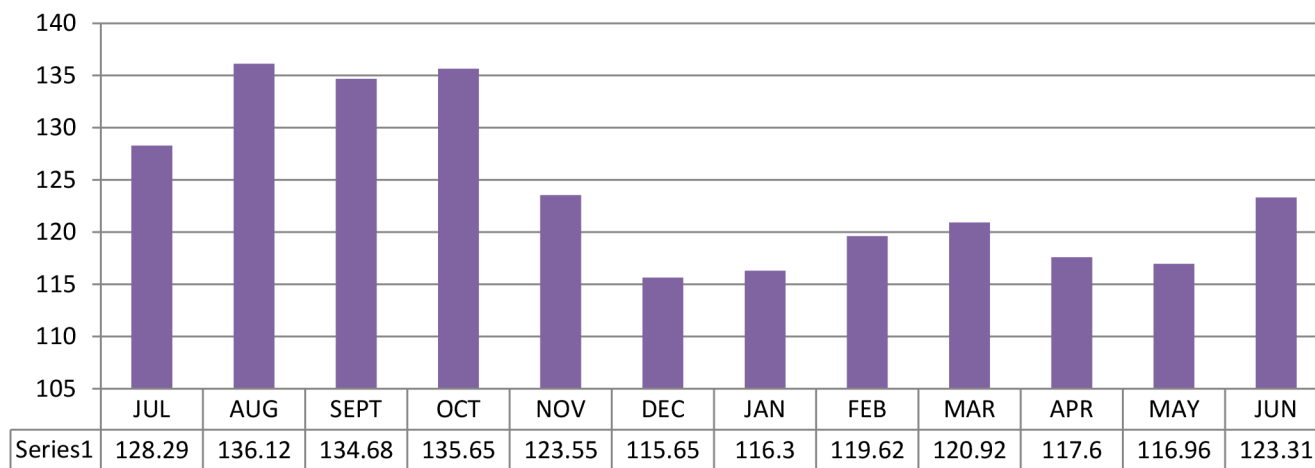
# Child and Family Protection (continued)

## GROWING CASE NUMBERS FISCAL YEARS 2011 THROUGH 2015



Similarly, the PSS has seen a 62.28% increase in the number of open cases from the end of FY2011 to the end of FY2015.

## PSS ATTORNEY CASE LOADS BY MONTH DURING FISCAL YEAR 2015



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, the PSS attorney caseloads in FY2015 were significantly higher than this standard.<sup>5</sup>

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

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

# Child and Family Protection (continued)

## 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 both parents. The Section provides legal advice and representation to Arizona Department of Economic Security's (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 our client, DCSS, in 11 offices statewide in the following counties: Cochise, Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai and Yuma. CSS also handles the litigation and covers court hearings in the following 5 counties: Apache, Graham, Greenlee, La Paz, and Santa Cruz.

### Trial Practice

CSS attorneys engage in fast-paced litigation 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 FY2015, the number of paternity orders and child support orders entered by the court decreased (15.8% and 11.4% respectively) due to a 3% reduction in the DCSS caseload from FY2014 to FY2015. In an effort to right-size orders, the number of modifications increased by 4% which contributed to a slight improvement in the current collections performance measure ratio. To increase the overall collections for both current support and payments on arrears, 3,091 enforcement actions were filed, an increase of approximately 12% from the previous year. The CSS trial attorneys appeared in 25,869 court appearances, a 9.5% decrease from FY2014 due to an effort to reduce review hearings. Overall, the DCSS caseload decreased from 185,000 cases to 180,000 open child support cases which consequently reduced the CSS litigation caseload from 7,727 cases at the close of FY2014 to 7,304 cases at the close of FY2015. The CSS Bankruptcy Team currently handles over 611 Chapter 7 and Chapter 13 cases.

### Policy & 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 FY2015, the CFPD Appeals Unit successfully represented DCSS in a number of active and new appeals. One appellate attorney was dedicated to child support appeals, supported by others when necessary. This attorney also answered briefs filed by pro per litigants and resolved a number of cases through substantive motion filing. Attorneys handling CSS appeals staff every case with an experienced reviewer from the Solicitor General's Office. The Appeals Unit filed 4 appellate briefs in CSS matters and handled 24 substantive matters for CSS.

# Child and Family Protection (*continued*)

In FY2015, CSS helped Arizona children receive the support to which they were entitled by:

- Judicial establishment of paternity for 1,405 children <sup>6</sup>
- Establishing new child support orders for 3,809 families
- Obtaining child support judgments of over \$42 million
- Resolving 4,988 actions for modification of support
- Representing DCSS in 25,869 court appearances
- Assisting DCSS to collect over \$349 million in support
- Increasing the collections for current support from .55:1 to .56:1 for every child support dollar owed
- In bankruptcy cases, collecting \$503,663 in support
- In non-Family Court litigation, collecting \$1,259,543 in support <sup>7</sup>; a 14.5% increase from FY2014

## 2015 Accomplishments

During the past fiscal year, the Child Support Services Section has been proactive in finding new ways to engage with parents and to assist them in resolving their child support legal issues. CSS has been working with DCSS, the courts and community partners to promote parenting time in a variety of ways. The Parenting Time workgroup developed brochures to educate parents about the benefits of parenting plans, created a specific DCSS Parenting Time webpage to provide information and resources, and created the My Sticker calendar to give both parents information about parenting time when the initial child support order is entered at court. CSS attorneys worked with the Family Court Administration in Maricopa County to develop a voluntary referral process for parents willing to attend a free parenting plan mediation, resulting in 18 parenting plans during the first six months of the project.

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<sup>6</sup>The Arizona IV-D Child Support Program is number two 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.

# Child and Family Protection (continued)

## CIVIL & CRIMINAL LITIGATION & 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 incarcerate individuals who escape from the child support work furlough program.

### CLA Appellate Matters

- Opened, litigated and/or reviewed 842 administrative, litigation and civil cases
- Opened and reviewed 185 contracts, leases, Intergovernmental Agreements and/or amendments, an increase from FY 2014 by 53
- Obtained 385 civil judgments in civil collections cases totaling \$1,191,604, a decrease of \$63,641 from FY2014
- Secured an additional \$44,982.73 in civil judgment collections without the need for reducing multiple matters to a judgment, a decrease by \$93,391.56
- Collected \$377,985.14 through wage and bank garnishments, an increase by \$68,246
- Filed 926 civil collections cases, an increase of 367
- Opened over 50 "matter" files for tracking significant legal advice provided to ADES, a decrease by 49
- Responded to over 1,614 subpoenas and requests for public records, an increase by 162

# Child and Family Protection (continued)

Program	Cases Closed
Adoption Subsidy	1
Adult Protective Services	1
Adult Protective Services Review Team	24
Comprehensive Medical And Dental Program	12
Contracts/Leases/IGA	84
Department of Child Safety (DCS)	2
Department of Economic Security (DES/DMR)	1
Division of Benefits/Med Elig (DFS)	1
Division of Develop Disab:Grievances	58
Division of Develop Disab:Long Term Care	36
Division of Developmental Disabilities	24
Equal Employ Opportunity Comm (Matters)	4
Foster Care Licensing	9
Guardian Subsidy	2
Medical Assistance Under DBME	2
Mental Health (CYF/CPS Cases)	2
Personnel Department of Child Safety	1
Personnel Div Of Aging & Adult Svcs	3
Personnel Div Of Developmental Disabilities	18
Personnel Div Of Employ Of Rehab Svcs	1
Personnel Div Of Technology Services	2
Personnel Office of Accountability	1
Protective Services Review Team	146
Rehab Services Administration (RSA)	10
Unemployment Insurance Benefits	99
Unemployment Insurance Contributions	9
Vocational Rehab & Blind Services	15
<b>Grand Total</b>	<b>568</b>

# Child and Family Protection (continued)

## Policy & Training

<b>Civil Collections by Program</b>			
<b>Program</b>	<b>Filed</b>	<b>Judgments Entered</b>	<b>Total Judgments</b>
Childcare Administration	0	1	\$734.15
Employment Overpayment	1	0	\$0.00
Food Stamp	1	1	\$1,533.95
Unemployment Insurance Benefits	924	383	\$1,189,336.64
<b>Grand Total</b>	<b>926</b>	<b>385</b>	<b>\$1,191,604.74</b>

<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>
Unemployment Insurance Benefits	23	\$44,982.73
<b>Grand Total</b>	<b>23</b>	<b>\$44,982.73</b>

<b>Garnishment Collection Summary</b>	
1 <sup>st</sup> Quarter 2015	\$83,310.62
2 <sup>nd</sup> Quarter 2015	\$97,437.24
3 <sup>rd</sup> Quarter 2015	\$95,700.40
4 <sup>th</sup> Quarter 2015	\$101,536.88
<b>Grand Total</b>	<b>\$377,985.14</b>

# Child and Family Protection (continued)

In FY2015, the CLA Criminal Practice Team:

- Filed 174 criminal cases
- Obtained 126 criminal sentences
- Obtained restitution orders totaling \$653,950.58
- Collected \$557,772.08 in restitution prior to sentencing
- Obtained orders in fines totaling \$11,920.00
- Obtained orders for 4,664 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	2	7	\$43,106.00	\$17,027.00	\$600.00	140
Employee-Cash Assistance	1	1	\$42,788.76	\$0.00	\$0.00	0
Food Stamp	1	4	\$17,625.00	\$4,404.00	\$200.00	200
Unemployment Insurance Benefits	170	114	\$550,431.22	\$536,341.08	\$11,120.00	4324
<b>Grand Total</b>	<b>174</b>	<b>126</b>	<b>\$653,950.98</b>	<b>\$557,772.08</b>	<b>\$11,920.00</b>	<b>4664</b>



# Civil Litigation Division



Division Chief Paul Watkins

## MISSION:

To enforce state law against those who violate the civil rights, or threaten the economic and environmental well-being of Arizonans.

### Division Summary

The Civil Litigation Division consists of the Consumer Protection and Advocacy Section, Environmental Enforcement Section, Division of Civil Rights Section, and Bankruptcy Collection and Enforcement Section.

## CONSUMER PROTECTION & ADVOCACY SECTION

The Consumer Protection & Advocacy (CPA) Section protects the public from consumer fraud and anti-competitive conduct; educates the public regarding consumer protection issues; enforces tobacco laws and protects youth from exposure to tobacco products; and provides legal advice and representation to client agencies. The Consumer Protection and Advocacy Section (CPA) contains the Consumer Litigation Unit (with offices in Phoenix and Tucson), the Consumer Information and Complaints Unit, and the Agency, Antitrust, and Tobacco Enforcement Units. CPA handles hundreds of cases and re-

sponds to thousands of consumer complaints each year.

During fiscal year 2015, CPA's key accomplishments included:

- A \$21.5 million settlement with Standard & Poor's, resolving allegations that S&P's misrepresentations about the objectivity and independence of its credit ratings violated Arizona law and contributed to the mortgage and financial crisis
- Filing the first Attorney General consumer fraud lawsuit in the country against General Motors for misrepresenting the safety of its vehicles over several years
- Helping lead a 50 state and federal agency coalition in a lawsuit against Cancer Fund of America for misrepresenting that hundreds of millions of dollars would be used for charitable purposes, when in fact, cancer patients received virtually nothing

## Consumer Litigation Unit

The Consumer Litigation Unit (CLU) enforces consumer protection laws, including the Arizona Consumer Fraud Act. The Consumer Fraud Act prohibits deceptive and unfair business practices in connection with the sale or advertisement of merchandise. Based largely on consumer complaints, CLU investigates potentially unlawful practices and pursues enforcement actions when violations of law are found. Remedies include restitution for consumers, court orders prohibiting future unlawful conduct, and civil penalties, among others.

### Auto Sales and Repairs

CLU pursued a wide variety of cases involving motor vehicle sales and repairs, as auto-related complaints topped the list of consumer concerns.

- *General Motors Lawsuit*

In November 2014, CLU sued General Motors, LLC (GM) for violating the Consumer Fraud Act by misrepresenting its vehicles as safe and reliable while knowing that many of them contained defects that rendered the vehicles

# Civil Litigation Division *(continued)*

unsafe and dangerous. Arizona was the first state to sue GM for allegedly concealing many safety defects in its cars over several years. For instance, the lawsuit alleges that GM knew in 2009 of an ignition switch defect that would cause a vehicle to stall if the driver accidentally bumped the steering column, but did not begin to recall any vehicles with this dangerous defect until January 2014, and, even then, proposed an insufficient repair. For at least the last five years, GM allegedly concealed defects that affected its vehicles' ignition lock cylinders, airbag systems, seat belt systems, seats, brakes, steering systems, and powertrains while advertising these vehicles as safe and reliable. Litigation continues.

- *Continuing Auto Repair Stings*

CLU continued to conduct undercover sting operations to identify motor vehicle repair businesses that defraud consumers. In August 2014, CLU obtained a consent judgment against Limberlost Investment Properties, LLC dba Meineke Econo Lube that required the business and its owner, Neil Werstler, to close their Tucson repair shop and refrain from owning, operating or managing any business in Arizona involving the repair or maintenance of motor vehicles. This case arose from an undercover investigation in which the air conditioning system of the "bait car"

was rigged so that it could be easily diagnosed and inexpensively fixed. Instead, the Defendants falsely told the State's undercover agent that the air conditioner did not work because the car's compressor was "blown" and that the agent would need to purchase a new compressor and associated parts for nearly \$1,000 according to the lawsuit filed with the judgment. After the agent agreed to the recommended repairs, the Defendants fixed the simple air conditioning problem, but then allegedly charged for a new compressor and related parts which were not installed. The judgment also required payment of \$8,500 in attorneys' fees and \$10,000 in civil penalties.

- *Subprime Auto Sales*

Although Front Line Auto Auction, LLC d/b/a Uncle Joe's Auto Sales ("Uncle Joe's") was open for less than one year, CLU received numerous consumer complaints about its business practices. In March 2015, CLU sued Uncle Joe's and its owners, Gina Colombo and Joseph Careccia, alleging that defendants' used motor vehicle sales and financing practices violated the Consumer Fraud Act. Uncle Joe's clientele typically consisted of consumers who had no or poor credit history, and did not speak English. The lawsuit alleges, among other things, that Uncle Joe's and its owners misrepresented the condition of

their motor vehicles, made deceptive statements to obtain deposits from consumers and then refused to return the deposits when consumers decided not to purchase. Litigation is ongoing.

- *Ban Against Repeat Transmission Repair Offender*

In this case, CLU enforced a prior judgment against the owner of a Tempe transmission shop and permanently banned Robert Brady from working in any capacity in a transmission shop. Robert Brady is the former owner of Transplant Plus, a transmission shop that entered into a 2011 consent judgment to resolve CLU's consumer fraud allegations. Upon learning that Mr. Brady was violating the 2011 judgment, CLU filed a contempt action in 2012. The resulting Addendum to the Consent Judgment required Brady to close his business and permanently prohibited him from owning or managing a transmission shop. CLU brought its 2015 action after learning that Mr. Brady had been managing a transmission repair shop.

# Civil Litigation Division *(continued)*



## Mortgage and Financial Fraud

- *Standard & Poor's Settlement*

In February 2015, CLU resolved its consumer fraud lawsuit against Standard & Poor's Financial Services LLC (S&P). S&P agreed to pay a total of \$1.375 billion to 20 Attorneys General and the U.S. Department of Justice, of which Arizona received approximately \$21.5 million. CLU's lawsuit, filed in 2013, alleged that S&P misrepresented the objectivity and independence of its structured finance ratings services. According to the suit, S&P repeatedly assured Arizona consumers that its ratings opinions were objective and independent. These representations were false because S&P's rating methodologies and ratings opinions were directly influenced by a desire to generate additional ratings business from clients, and structured finance securities' issuers, according to the suit.

- *Foreclosure-related Scams*

Despite the improved economy since the foreclosure crisis, CPA continued to receive a significant number of consumer complaints regarding mortgage issues in fiscal year 2015, including against

foreclosure rescue companies. CLU sued Brother's Help Solution and its owner, Nelson Molano, for charging up-front fees of \$2,000 for mortgage loan modification assistance, in violation of Arizona's foreclosure consultant laws. According to the lawsuit, Mr. Molano told his mostly Spanish-speaking clients that he was providing a valuable service they could not obtain elsewhere, when in fact several organizations provide these services at no cost. In at least one instance, Mr. Molano took a client's check written to a bank, altered and cashed it, and then pocketed the proceeds. The December 2014 consent judgment prohibits similar conduct in the future and requires Defendants to translate their contracts into Spanish for consumers who do not speak English. Defendants also agreed to pay \$20,000 in civil penalties, \$9,450 in attorney's fees, and consumer restitution.

CLU's lawsuit against Advantage Foreclosure LLC and its owners Matthew and Lynette Van Reemoortel led to the closure of the company's website. Although the website advertised foreclosure consulting services nationwide, consumers complained they did not receive the promised services. CLU filed a consumer fraud lawsuit in February 2015, and pursued default judgments against the defendants, who failed to answer the allegations. And in an action against Way of Life World

Foundation, Inc. d/b/a Advocates United For Fair Housing and Isabelle Traslavina, CLU found that Ms. Traslavina and her non-profit company accepted up-front mortgage assistance fees, failed to provide 24 hours to review mortgage assistance services contracts, failed to provide the required a 3 day right of cancellation, and engaged in other behavior in violation of Arizona's consumer fraud and foreclosure consultant laws. Ms. Traslavina was required to pay consumer restitution up to \$13,200 plus \$3,000 in attorneys' fees.



CLU is always attuned to new mortgage scams, and in fiscal year 2015 CLU stopped an inventive "house-sitting" scam promoted on Craigslist. CLU sued Derek Walker and Sydnee Bollwinkel (the "Bollwinkels") in September, 2014 for consumer fraud. The Bollwinkels advertised on Craigslist an "investor sponsored house-sitting program" that would purportedly allow consumers to obtain housing "for up to 6-18 months of FREE RENT

and only \$500/month after free rent period.” The Bollwinkels sold consumers a list of residential properties in foreclosure for \$500, telling consumers that they should contact the owners directly. Consumers that purchased the list found that many properties were occupied, the owner could not be located, and/or the owner was not interested in leasing the property. Few, if any, consumers found a property to use for up to 6-18 months’ rent free.

- *Foreclosure-related Scams*

Over 37,000 Arizonans have received services or education from various programs funded by the 2012 national mortgage settlement funds. This includes 8,920 Arizonans assisted by housing counseling, 1,458 who received direct legal services, and 24,579 receiving self-help legal education or outreach. The national mortgage settlement programs also include a program providing accessibility improvements for veterans with service-connected disabilities, relocation assistance, loan assistance, and homeless support services. In fiscal year 2015, CPA continued to maintain a dedicated mortgage phone line and e-mail address for mortgage related questions or complaints, which has served over 12,300 consumers since 2012.



## **Multi-state Enforcement Actions**

CLU often collaborates with state and federal consumer protection agencies to pursue wrongful conduct occurring at the national level. A few notable cases in fiscal year 2015 included:

- *Charity Fraud*

CLU took a leading a role in litigation joined by all 50 states and the Federal Trade Commission against four phony cancer charities and their operators for allegedly scamming more than \$187 million from innocent donors. In a joint complaint filed in May 2015 against Cancer Fund of America, Children’s Cancer Fund of America, Cancer Support Services, and The Breast Cancer Society, the states and FTC alleged that the charities portrayed themselves to donors as legitimate charities with nationwide programs providing direct support to cancer patients. In fact, the overwhelming majority of contributions benefited only the perpetrators, their friends, and professional fundraisers, who often received 85% or more of every contribution, according to the lawsuit. Defendants or their telemarketers often told donors

that their contributions would be used to provide pain medication to children suffering from cancer, to transport patients to chemotherapy appointments, and pay for hospice care. But according to the complaint, the defendants instead spent donations on cruises, jet ski outings, concert tickets, and dating site memberships. In addition to pursuing the ongoing lawsuit, CLU also successfully obtained court orders closing down two related cancer charities and stopping the people that ran them from operating other charities.

- *Wireless Cramming*

In fiscal year 2015, CLU, together with the 49 other states and federal agencies, held the nation’s four largest mobile carriers accountable for charging consumers for text messaging services they never requested or authorized, a practice known as “mobile cramming.” Cramming occurs when a cell phone carrier places unauthorized charges for third-party services on consumers’ mobile telephone bills - typically \$9.99 per month for “premium” text message subscription services such as horoscopes, trivia, and sports scores that they have never heard of or requested. AT&T Mobility LLC, T-Mobile, Sprint and Verizon agreed to provide refunds to consumers, adopt procedures to ensure that consumers are not improperly billed for third



# Civil Litigation Division *(continued)*

party charges, and pay a total of \$85.5 million to state and federal agencies.

- *Satellite Radio Billing Practices*

A multi-state settlement with Sirius XM similarly addressed billing for unwanted services. Consumers who purchased new motor vehicles received free satellite services from Sirius XM for a period of time. When the free trial ended, consumers complained of difficulties in canceling contracts, automatic renewals without consumers' notice or consent, and unanticipated higher rates after a low introductory rate. Under the settlement, Sirius XM must clearly disclose its contract terms and ensure that consumers canceling the service may easily do so. Sirius must also provide a nationwide consumer restitution program, which is expected to provide refunds to thousands of Arizona consumers.

- *Drug Promotion*

In August 2014, CLU, along with 41 other states, entered into a \$35 million settlement with Pfizer, Inc. in connection with the marketing of the drug Rapamune, manufactured by its subsidiary, Wyeth Pharmaceuticals, Inc. The settlement resolved allegations that Wyeth misrepresented the uses and benefits of Rapamune, an immunosuppressive drug currently approved by the

FDA as a prophylactic for organ rejection after kidney transplant surgery, by promoting it for organ transplants other than kidney transplants and by promoting its use in unapproved drug combinations. Arizona received over \$720,000 from the settlement, which totaled \$35 million nationwide. The consent judgment also required Pfizer to ensure that its marketing practices do not unlawfully promote Rapamune or any Pfizer product.

## Protecting Small Businesses



Small business owners are busy and scammers know it. That's why they send deceptive invoices to small businesses for relatively small amounts, hoping that harried business owners will simply pay the invoices without too much scrutiny. In February 2015, CLU sued Michigan-based Mandatory Poster Agency, Inc., alleging consumer fraud in connection with solicitations sent to Arizona businesses. The solicitations, entitled "2013- Annual Minutes

Form," contained the assumed name "Corporate Record Services" and implied that businesses were required to pay \$125 and return the form, according to the complaint. Arizona law does not, however, require businesses to file annual minutes with any government entity. CLU alleges that many business owners who paid the \$125 believed the form was affiliated with the State of Arizona or the Corporation Commission. That litigation is ongoing.

CLU also wrapped up ongoing litigation against UST Development and its owners, David and Cynthia Bell, who were sued for sending deceptive mailers to businesses charging \$350 or \$425. Although the mailer appeared to be an invoice for previously received maintenance services, it really was an invoice for telecommunication maintenance services that the businesses had never authorized or requested. In October, 2014, the Court entered judgment against Cynthia Bell, finding her jointly liable for the \$616,334.50 default judgment previously entered against David Bell.



## Telemarketing Fraud

CLU won a major victory in fiscal year 2015 in an ongoing case against 26 defendants involved in an elaborate business opportunity/work at home scheme. Maurice Chelliah and other defendants used telemarketing to sell websites, claiming that consumers would earn substantial commissions by selling credit card merchant and other services from the consumer's web sites. Consumers, who were mostly seniors, were then subjected to high pressure sales tactics to buy marketing packages costing thousands of dollars. Consumers did not realize the promised commission; instead, many lost their life savings. In March 2015, the court ruled that the defendants violated Arizona laws on telephone solicitations, consumer fraud, and civil racketeering.

Stealth Solar made thousands of telemarketing calls – including to consumers listed on the Federal Trade Commission's Do Not Call registry – to convince consumers to let Stealth employees make sales pitches at their homes. Stealth's representatives exaggerated the benefits of a rooftop

solar system, by claiming that it “cannot even add one cent to your personal budget,” its customers can “save tons of money every single month,” and “utility bills will rise 8-14% per year if you don't get a PV [solar] System.” In a January 2015 Consent Judgment, Stealth Solar largely admitted its wrongdoing and agreed to pay up to \$92,000 for consumer restitution, \$20,000 in attorneys' fees, and \$160,000 in civil penalties. It also agreed to stop telemarketing consumers listed on the Do Not Call Registry and to comply with the Consumer Fraud Act.

In February 2015, CLU investigated Going Green Solar for making thousands of telemarketing calls, conducting high pressure sales presentations in the homes of potential clients, and selling products that did not result in a reduction of energy bills. A consent judgment entered in that case acknowledged that Going Green called consumers on the Do Not Call registry, targeted senior citizens, and violated the Consumer Fraud Act. The company agreed to pay up to \$121,000 in consumer restitution, \$17,000 in attorneys' fees, and \$50,000 in civil penalties so long as it fully complies with the settlement terms.

CLU also pursued Advanced Employments Solutions, for illegal telemarketing and representing to consumers that the high priced household goods they were sell-

ing (\$74.95 for 100 ziploc bags) would help “handicapped veterans” and other “disadvantaged” individuals, when there was no evidence that funds paid by consumers actually helped anyone. And CLU permanently banned individuals behind the Advanced Media Group from telemarketing into or from Arizona in a judgment entered in September 2014.

## Door-to-Door Sales



Arizona law regulating in-home solicitation sales are designed to protect consumers who may feel intimidated into making a purchase and cannot easily walk away from the transaction occurring in their home. That's why CLU pursued Express Home Services LLC after receiving numerous consumer complaints that the company failed to provide the required notices for in-home solicitation sales, including the right to cancel the sale within 3 business days. In a May 2015 consent judgment, Express agreed to change the form of its contract and provide consumers with all required notices. Express also

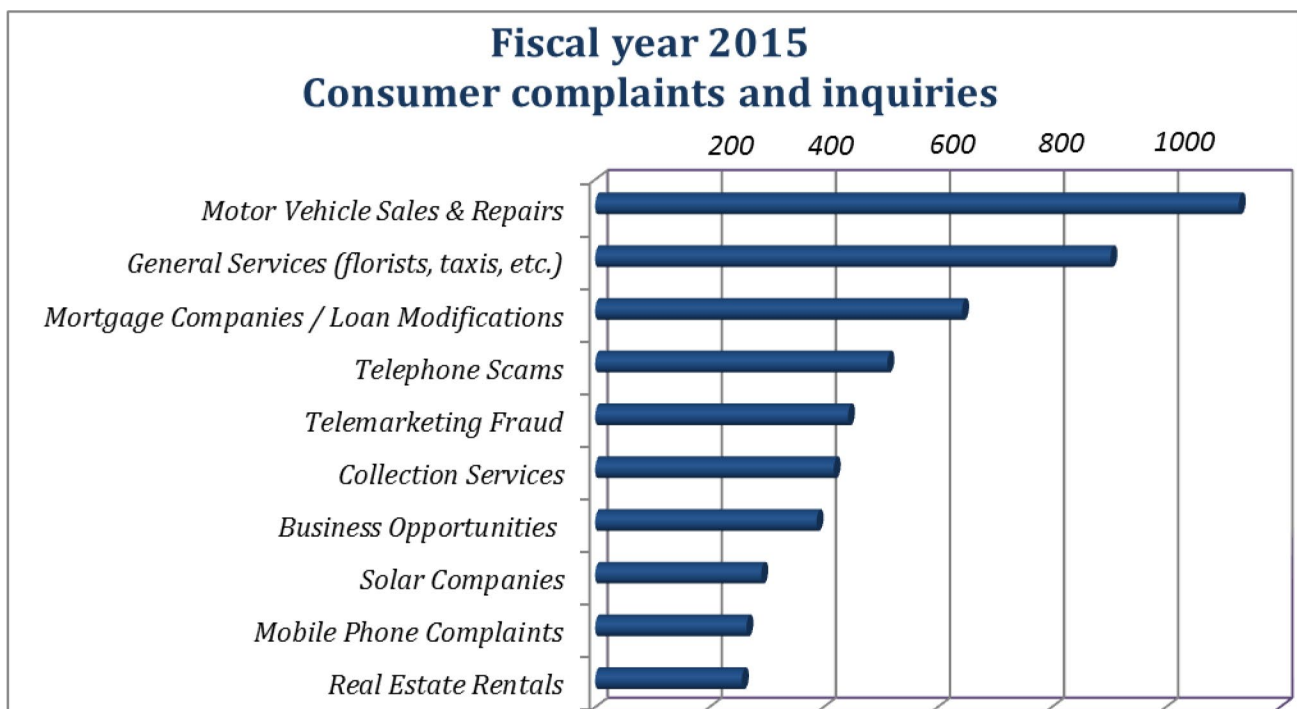
# Civil Litigation Division *(continued)*

agreed to stop telling consumers that they can't cancel their contracts. Under the judgment, Express will pay almost \$100,000 in civil penalties and attorneys' fees.

Capital Connect, Inc., a Tucson-based company that sells home alarm systems and alarm monitoring services to Arizona consumers, also used high pressure sales tactics to sell its services according to consumer complaints. To resolve CLU's investigation, Capital Connect agreed to contact existing customers and offer them the opportunity to cancel their contracts without penalty. The March 2015 consent judgment also requires the company to provide Arizona consumers who it solicits in home with all notices required under Arizona law, and to pay a total of \$35,000 in civil penalties and attorneys' fees.

## CONSUMER INFORMATION & COMPLAINTS UNIT

The Consumer Information and Complaints Unit ("CIC") received more than 16,000 consumer complaints and inquiries in fiscal year 2015. Common consumer complaint areas this year include the following:



Consumers may file complaints on-line at [www.azag.gov](http://www.azag.gov), or may request a copy of a complaint form by calling CIC [Phoenix - (602) 542-5763; Tucson - (520) 628-6648; outside Phoenix and Tucson metro areas - (800) 352-8431]. CIC phone representatives are bilingual in Spanish and English, and answered approximately 28,533 consumer phone calls in fiscal year 2015.

# Civil Litigation Division *(continued)*

## AGENCY UNIT

The Agency Unit provides legal advice and representation to the Arizona Departments of Financial Institutions, Real Estate, Game and Fish, and Insurance. Because of the diversity of the client agencies represented, the Agency Unit addresses a broad range of legal issues at the Office of Administrative Hearings as well as in state and federal court. A few notable cases handled by the Agency Unit in fiscal year 2015 include:



### Mexican Wolf Litigation

In June 2015, the State of Arizona filed suit against the Secretary of Interior and the U.S. Fish and Wildlife Service (FWS) for violations of the Endangered Species Act (ESA). Arizona alleges in the lawsuit that the FWS has failed to develop a new recovery plan for the Mexican wolf that complies with the requirements of ESA. The FWS prepared an original recovery plan for the Mexican wolf in 1982, but that plan has since expired and it does not include the necessary elements ESA

requires for a recovery plan. Arizona is seeking declaratory and injunctive relief compelling the FWS to develop a new recovery plan within a reasonable period.

### Protecting the Public from Unscrupulous Licensees

To protect the public, the Agency Unit's client agencies carefully review each application to ensure that only eligible individuals are entrusted with a state license to sell real estate, advise the public on insurance matters, or manage others' finances. The agencies also scrutinize the conduct of current licensees, and revoke licenses when unlawful conduct is identified. In fiscal year 2015, the Agency Unit successfully handled 27 cases involving license denial or revocation, including successfully defending decisions to deny licenses to individuals who had been involved in narcotics or convicted of fraud.

The Agency Unit also represented the Department of Real Estate in multiple revocation actions against property managers who mishandle trust funds. For instance, following an administrative hearing, the Commissioner concluded that Brandon Glade, Accountability Management & Real Estate and Kenneth Boren had a \$200,000 shortfall in the trust account, improperly used clients' funds held in trust, and failed to conduct monthly recon-

ciliations and balances. The final order revoked all 3 licenses and imposed a civil penalty on Glade and Accountability Management.

**FINAL  
NOTICE**

### Department of Financial Institutions Cases

The Agency Unit represents the Department of Financial Institutions in cases against a variety of licensees, including third party collection agencies. According to over 50 consumer complaints, Cavalry Portfolio Services failed to respond to requests to provide proof of the debt they were collecting on, even though Cavalry had previously reported the consumers' debt to credit reporting agencies. While not admitting liability, Cavalry agreed to resolve the Department's investigation, comply with all state laws and regulations governing collections practices, and pay a civil monetary penalty of \$175,000.

Another Agency Unit case involved AmeriFirst Financial, Inc., a mortgage banker licensed by the Department. The July 2014 Consent Order alleged that AmeriFirst co-mingled trust funds, paid compensation to unlicensed independent contractors, failed to



# Civil Litigation Division *(continued)*

supervise its loan originator employees, and allowed borrowers to sign mortgage documents with blank spaces. AmeriFirst agreed to pay a \$60,000 civil penalty to resolve the matter without admitting liability.

## 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, group boycott agreements between competing businesses, and other types of anticompetitive conduct. ATU also handles school financing and procurement cases. Significant cases in FY 2015 included:



### Visa and MasterCard Settlement

In fiscal year 2015, ATU negotiated a \$1.5 million settlement with Visa and MasterCard on behalf of the State of Arizona, its agencies, and two of its universities. This case arose from a class action lawsuit alleging that Visa and MasterCard conspired to fix interchange fees in violation of antitrust laws. Under ATU’s

leadership, Arizona opted out of the class action and negotiated a more favorable settlement for the State.

### E-books Litigation

ATU made significant progress in its E-books litigation against Apple this year. ATU and other states originally sued Apple and several major publishers for fixing the prices of electronic books. The publishers settled, but Apple went to trial – and lost – on its claim in 2013. This year, the federal court of appeals upheld the trial court’s finding that Apple conspired with the publishers in violation of antitrust laws. Arizona and 32 other states have reached a settlement with Apple that will provide monetary relief to Arizona consumers who overpaid for e-books, should the states prevail after all appeals are exhausted.

### American Express

ATU, along with the U.S. Department of Justice and several other states, sued American Express in 2010 for imposing anti-competitive rules on merchants by, for example, preventing merchants from rewarding consumers for using credit cards that cost merchants less to process. After a lengthy trial in which ATU actively participated, the trial court ruled that American Express violated antitrust laws and ordered the company to reform its prac-

tices. American Express has appealed the trial court’s February 2015 decision.



### School Procurement

ATU handled several matters involving school procurement and financing issues in 2015, including one involving the Mayer Unified School District. ATU investigated the District after receiving a citizen complaint that the District had violated procurement laws and regulations in awarding contracts for the purchase of materials and construction of a baseball field at its elementary school. ATU’s investigation found that the District awarded contracts prior to obtaining quotes from competing vendors and that the District was aware its grant consultant had asked a vendor to split its bid so that the District would not need to issue a formal solicitation. After ATU sued, the District agreed to a consent judgment which requires it to obtain additional procurement training and special procurement audits for the next two years.

# Civil Litigation Division *(continued)*

## TOBACCO ENFORCEMENT UNIT

The Tobacco Enforcement Unit (TEU) diligently enforces Arizona's tobacco laws to protect the State's payments due under the 1998 Tobacco Master Settlement Agreement (MSA). In 2015, Arizona received approximately \$100 million in total MSA payments. Since 1998, tobacco manufacturers have paid approximately \$1.7 billion to the State. Under state law, MSA funds are dedicated to the Arizona Health Care Cost Containment System for health care.

TEU employs a multi-prong approach to enforce tobacco laws and is engaged in a number of discrete activities in collaboration with other state and federal agencies. A few highlights of TEU's work in fiscal year 2015 include the following:



### Youth Tobacco Program

TEU continued to successfully operate the Youth Tobacco Program in fiscal year 2015. With the assistance of youth volunteers, the Arizona Department

of Health Services and local law enforcement agencies, TEU systematically monitors retailer compliance with state laws prohibiting the sale of tobacco products, including electronic cigarettes, to minors. In fiscal year 2015, the program performed 1,989 undercover inspections of tobacco retailers, resulting in 625 criminal citations issued to clerks and businesses who sold tobacco products to youth volunteers. If a retailer sells a tobacco product to an underage volunteer, the sales clerk may be cited for furnishing tobacco to a minor, a petty offense with a potential fine of \$300. The business may also be fined up to \$1000 per offense. Over 25,000 retail inspections have been performed since the program's inception in 2002.

### Enforcing Ban Against On-line Tobacco Sales

Arizona law prohibits tobacco companies from selling cigarettes and roll-your-own tobacco products on-line, and in fiscal year 2015 TEU pioneered a new enforcement process. By conducting undercover purchases on-line and determining whether those sales complied with federal interstate delivery reporting requirements, TEU identified 25 companies that were violating state and federal law. TEU then nominated those companies for inclusion on the "non-compliant list" maintained by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives

(ATF), which essentially bans the company from selling tobacco anywhere in the country. Arizona has nominated more tobacco companies to the ATF non-compliant list than all the other states combined. TEU also works closely with credit card companies to identify and take appropriate action against merchants that sell tobacco products on-line in violation of Arizona law.

### Enforcing the Escrow and Directory Statutes

State law requires any tobacco product manufacturer selling cigarettes to Arizona consumers to either (1) join the Tobacco MSA by becoming a "participating manufacturer" (PM); or (2) place certain sums of money into a qualified escrow fund for the benefit of Arizona based on the number of sales made in the state as a "non-participating manufacturer" (NPM).

TEU enforces laws that apply to both types of manufacturers. 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 compli-

# Civil Litigation Division *(continued)*

ance. 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. TEU has again worked diligently to receive total compliance with the Escrow Statute.

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.

## DIVISION OF CIVIL RIGHTS SECTION

The Division of Civil Rights Section ("DCRS") enforces the Arizona Civil Rights Act ("ACRA"). ACRA prohibits discrimination in employment, housing, public accommodations and voting. The DCRS investigates, mediates, and litigates complaints alleging violations of ACRA and seeks to reduce discriminatory conduct through education, outreach, conflict resolution services and mediation training programs. Within the DCRS is the Arizona Civil Rights Advisory Board, which publishes studies that work to eliminate discrimination.

Arizonans can file charges with the DCRS online, by phone, mail or in person. In FY 2015, the DCRS investigated 1,412 discrimination charges that potentially violated ACRA. DCRS investigated charges alleging the following types of discrimination:

- Race, 96
- Color, 7
- Disability, 235
- Age (over 40), 104
- Religion, 12
- National Origin, 91
- Sex (including pregnancy), 135
- Familial Status (Housing), 8
- Retaliation, 191

Where possible, the DCRS seeks to resolve disputes through various forms of conflict resolution. In FY 2015, the DCRS resolved 97 charges of discrimination either through mediation, conciliation, or litigation settlements. As a result of these efforts, the DCRS obtained a total of \$1,271,694.50 in monetary relief for Charging Parties and for future monitoring and enforcement activities, along with a wide variety of injunctive relief to prevent future civil rights violations. The conflict resolution program surveys participants and received 96% positive reviews in FY 2015.

The highlights of the cases litigated by the DCRS this past year include the following:

### *Cooke v. Town of Colorado City*

Following a jury verdict for the State, the Court ordered the maximum statutory civil penalties of \$250,000 against all five Defendants, awarded the State \$2,182,337 in attorney fees and non-taxable costs, and retained jurisdiction to enforce a ten-year injunction preventing Defendants from discriminating in the terms, conditions,

# Civil Litigation Division (*continued*)

or privileges of provision of services or facilities for housing based on religion. Violating the injunction may result in Defendants or their agents being held in civil or criminal contempt. Defendants violated ACRA when they denied services necessary for water to people not members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (“FLDS”).

## *State et.al. v. The Geo Group, Inc.*

In this employment discrimination case, DCRS and plaintiffs alleged that male managers sexually harassed a class of women employees, and fostered an atmosphere of sexual intimidation and harassment at two prison facilities in Pinal County. At the summary judgment stage, the District Court dismissed any class members who had not been specifically identified during the administrative investigation. The DCRS appealed the dismissal of the class members to the Ninth Circuit, with oral argument August 2015. The DCRS is awaiting the Ninth Circuit’s ruling.

## *City of Tempe v. State*

In 2015, an appellate court ruled that the State has jurisdiction to investigate municipal corporations such as Tempe for violating the Arizona Fair Housing Act in the administration of a Section 8 housing choice voucher program. Furthermore, the Attorney General did not abuse its discretion in declining Tempe’s request to dismiss a fair housing complaint before the Attorney General had completed its investigation.

## *Robinson v. Les and Margaret Janas*

In this housing discrimination case based on failure to accommodate a disability, a tenant was denied her request to modify the shower to make it accessible for her wheelchair. She agreed to pay for the modifications and return the shower to its original form at the end of her lease. The denial of the request left her able only to take sponge baths at her sink. After filing suit but before trial, the DCRS reached a settlement agreement with the housing provider that included training in a public consent decree.

In FY 2015, the Arizona Civil Rights Advisory Board published a letter encouraging home builders and home buyers to consider single family residences that contain characteristics that make the home accessible to people of differing levels of physical ability. This “inclusive housing design” was recommended by the Board because houses with these features remain accessible or are inexpensively transformed in cases of injury or illness.

In addition to its investigation and enforcement activities, the ACRD participated in or sponsored 47 education and outreach events to inform the community about civil rights laws and the ACRD’s complaint and resolution process.

## ENVIRONMENTAL ENFORCEMENT SECTION

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.



# Civil Litigation Division (*continued*)

## *State v. ASARCO LLC, Belgravia Unit*

EES obtained court approval of a settlement that required ASARCO, LLC, an international mining company, to pay a \$40,000 civil penalty. EES represented ADEQ in this enforcement action against ASARCO for violations of the Clean Water Act at the Belgravia Unit of the Ray Complex, in Pinal County, Arizona. ASARCO stored mine tailings approximately 542 feet from the Gila River at the site. On two different days, a water supply line ruptured, resulting in the discharge of more than a million gallons of water and mine tailings into the Gila River. Under the Clean Water Act, which is administered by ADEQ, the discharge of mine tailings is a pollutant and illegal without a permit.

## *State v. Veolia ES Technical Solutions, LLC*

EES obtained court approval of a settlement that required Veolia ES Technical Solutions, LLC, to pay a \$360,000 civil penalty for violations of Arizona's Hazardous Waste Program. Veolia operates a mercury recycling facility in Phoenix where it processes fluorescent lamps, mercury switches, batteries, and other mercury containing waste items. Veolia had numerous hazardous waste sampling, storage, and transportation violations at its facility. EES represented ADEQ in this enforcement action after compliance officers collected samples of fluorescent lamps with mercury components that were generated by Veolia and dumped in a gravel pit in Phoenix.



*Waste lamps dumped in a gravel pit in State v. Veolia ES Technical Solutions, LLC*



# Civil Litigation Division *(continued)*

## *State v. Frank Tadeo Chevron Co.*

EES obtained a judgment for \$90,000 against Frank Tadeo Chevron for failing to remove out-of-service underground storage tanks at its gas station in Douglas, Arizona. Underground storage tanks used for storing gasoline must be removed after being taken out of use. If the tanks have leaked, the facility owner must remediate any contamination to the soil and groundwater. EES represented ADEQ in an enforcement action against Tadeo after he refused to remove four gas station tanks. Along with obtaining the civil penalty, EES obtained a court order requiring the removal of all four tanks.

## *State v. William W. Arnett*

In this case before the Court of Appeals, EES successfully defended a trial court's judgment in favor of ADEQ against William W. Arnett who owned a leaking 12,000-gallon underground storage tank at a facility in Tucson. Arnett claimed that he was not liable because the tank was owned by his corporation, Yellow Cab Company of Tucson, Inc. EES represented ADEQ in a trial to determine liability for Arnett's violations of Arizona's Underground Storage Tanks Program at the Yellow Cab facility where ADEQ incurred over \$600,000 in costs for groundwater and soil remediation related to the leaking tank. The Court of Appeals, like the trial court, rejected Arnett's claims that he was not liable as the tank's owner. After the Arizona Supreme Court denied Arnett's petition for further review, the Court of Appeals remanded the case back to the trial court to determine damages and civil penalties.



*Removal of an underground storage tank*

## *State v. Truxton Canyon Water Company*

EES represented ADEQ in this enforcement action against Truxton Canyon Water Company for violations of Arizona's Safe Drinking Water Program. Truxton operates a public water system in Kingman, Mohave County, Arizona and was distributing water with arsenic levels that violated legal limits. EES obtained a preliminary injunction and a final judgment from the court that ordered Truxton to construct an effective arsenic treatment system and provide alternative sources of drinking water to its customers during the construction of the new system.

# Civil Litigation Division *(continued)*

## *State v. Fisher Sand and Gravel Co.*

In this case before the Arizona Court of Appeals, EES represented ADEQ and successfully defended a lower court's decision ordering Fisher Sand and Gravel Company to pay a \$500,000 civil penalty for air quality violations that occurred while Fisher was operating under a settlement agreement for prior air quality violations. At various locations in Arizona, Fisher owns and operates portable plants for manufacturing road-building materials. Its operations include crushing and screening plants and hot mix asphalt plants. Fisher was operating under a judgment for prior violations of Arizona's Air Quality Control Program laws when it committed new air quality violations at its El Mirage facility in Maricopa County, Arizona. Under the terms of a settlement agreement, Fisher was liable for new penalties if it committed new air quality violations within two years of court's approval of the settlement. After the court ordered an additional civil penalty of \$500,000, Fisher appealed with numerous legal theories, which the Court of Appeals rejected after briefing and argument.

## *Florence Copper Project*

In related cases, one before the Court of Appeals and one before an administrative law judge, EES successfully defended ADEQ's decision to issue an aquifer protection permit to a new copper mine in Pinal County, Arizona. In the Court of Appeals case, the appellants challenged ADEQ's authority to adopt an administrative rule authorizing temporary aquifer protection permits for pilot projects. The Florence Copper project, which the appellants opposed, applied for and obtained a temporary aquifer protection permit to conduct in situ (in place) copper recovery by using wells to dissolve and extract underground copper minerals near Florence, Arizona. After EES briefed and argued this case, the Court of Appeals ruled that the applicable statutes did not prohibit ADEQ from adopting the temporary rule, and that ADEQ was entitled to deference in its statutory interpretation. In the case before the administrative law judge, the appellants challenged ADEQ's decision to issue a temporary permit to Florence Copper. Following the hearing, the administrative law judge and the Arizona Water Quality Appeals Board upheld ADEQ's overall decision to issue the permit with some changes that were submitted to ADEQ.

## *Rosemont Copper Mine*

In an appeal of an administrative law judge's decision, EES successfully defended ADEQ's decision to issue an air quality permit to Rosemont Copper Company for a proposed copper mine in the Santa Rita Mountains in Pima County, Arizona. The appellants, who opposed the mine, claimed that ADEQ incorrectly calculated, during its permit review process, the facility's expected emissions and the ambient air quality in the area where the mine will be located. After an administrative law judge upheld ADEQ's permit, the appellants appealed to the Pima County Superior Court for review of the administrative decision. The Court upheld the administrative decision, which found that ADEQ's issuance of the air quality permit was supported by both law and substantial evidence.

## *Michigan et.al. v. EPA*

Arizona joined approximately twenty other states to challenge EPA's rule restricting emissions of hazardous air pollutants from power plants under Section 112 of the Clean Air Act (CAA). The Supreme Court remanded EPA's rule after finding that EPA interpreted the CAA unreasonably because it determined that costs were irrelevant. The CAA authorizes the regulation of hazardous air pollutants from power plants when appropriate and necessary, and the Supreme Court found that "appropriate" requires consideration of costs. The Court ruled that EPA acted unreasonably for ignoring costs estimated at \$9.6 billion dollars annually compared to \$4- 6 million dollars in annual benefits.



# State Government Division



Division Chief Dawn Northup

## MISSION:

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

### Division Summary

The State Government Division consists of eight sections: Agency Counsel, 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

### Major Case Highlights

#### *B.K., et.al. v. McKay, et.al.*

This class action lawsuit against the Arizona Department of Child Safety and Department of Health Services alleges various federal statute and constitutional claims in connection with state foster care program. It seeks injunctive relief relating to physical, mental and behavioral health services, placement alternatives for certain needs, family visitation and reunification, sibling placement, abuse or neglect investigations, and neutral expert to monitor compliance.

#### *City of Scottsdale v. State of Arizona*

The City of Scottsdale banned all sign-spinners (aka sign-walkers) from public lands in direct conflict with an Arizona statute. The City sued the State for declaratory relief, arguing that the statute is unconstitutional because it exceeds the State's authority over charter municipalities. The State prevailed on the merits in the Superior Court and Arizona Court of Appeals.

#### *Gallardo v. State of Arizona*

Plaintiffs challenged an Arizona statute as unconstitutional because it turned on population-based classifications. The State prevailed before the Arizona Supreme Court in an important decision that clarifies the law.

#### *State of Arizona, Gila River and Salt River Indian Communities v. Tohono O'Odham Nation*

Arizona, Gila River and Salt River Indian Communities filed a complaint against TON alleging that it had breached its gaming compact with Arizona by trying to construct a casino in Glendale. Promissory estoppel and other tort theories were also asserted in the complaint. The ninth circuit has not yet set an oral argument date. The motion of TON to expedite oral argument was denied by the ninth circuit on May 20, 2015. TON filed a motion for reconsideration which was also denied.



# State Government Division (*continued*)

## *Valle del Sol (“VDS”) v. Whiting*

This is a class action facial challenge to SBI070 by the ACLU. Plaintiffs’ motion for a preliminary injunction was granted on the “day laborer or Home Depot” aspect of SBI070. This was appealed and the 9th circuit affirmed the decision. The District court vacated the injunction on 2(B) and denied the motion to keep it in effect. This was appealed by ACLU but they dismissed their appeal. The District Court held Section 5 of SBI070, the harboring section, was preempted and we appealed that decision to the 9th Circuit. Oral argument was held on April 2, 2013. The 9th Circuit wanted supplemental briefs on the vagueness of the statute. Decision was issued on October 8, 2013 upholding Judge Bolton’s decision. We filed a petition for cert. on January 6, 2014 which was denied. We are waiting for oral argument on cross motions for summary judgment; and settlement discussions are ongoing.

## *Puente Arizona v. State of Arizona*

This is a complaint by ACLU as a class action against Joe Arpaio, Bill Montgomery and the State, alleging that A.R.S. §§ 13-2008 and 13-2009, which inter alia make it a crime to use false ID to obtain employment, are unconstitutional. Plaintiffs allege several identify theft statutes are preempted by federal law and violate equal protection. We are representing the State defending the constitutionality of the statutes.

## AGENCY COUNSEL SECTION

The Agency Counsel Section (ACS) is responsible for providing legal advice and litigation support, for approximately 100 state entities including state agencies, boards, commissions, judicial officers and elected officials. ACS clients range from Department of Administration, Department of Corrections and the Courts, to the State Board of Equalization, Housing, Commission on Indian Affairs, the Arizona Radiation Regulatory Agency, and Board of Executive Clemency.

ACS deals with a very broad range of issues, and the nature of the Section’s work is ever changing. ACS has particular expertise in the areas of contracting/procurement, probation, issues of parole, public records under both Title 39 of the statutes and Supreme Court Rule 123, retirement related questions and to a certain extent, government finance

### Major Accomplishments

#### *Procurement Protests*

We successfully assisted our client agencies in preparing procurement officer decisions in major protests that were effective in ending the protests without further proceedings. Examples include the Inmate Telephone contract protest (and successful defense of related stay litigation in the superior court) for the Department of Corrections; and a protest of the Department of Administration’s award of the State employee health insurance contract by AmeriBen during July 2014.

# State Government Division (*continued*)

## *Contract matters*

We assisted our clients in major and unusual contract matters. For example, we assisted the Department of Corrections in modifying its inmate health care contract to comply with the settlement of the *Parsons v. Ryan* litigation. We assisted the DOC with obtaining a long-term water lease for operation of a newly-acquired (formerly private) prison in Marana, AZ. We assisted the Department of Public Safety in its acquisition of a main frame computer, which originally was structured as a lease and needed to be restructured as a purchase. We assisted Arizona Correctional Industries in negotiating an extension with a major employer that protected ACI from exposure under a recent case involving the Americans with Disabilities Act.

## *Bankruptcy matters*

By adding a bankruptcy practitioner to the Agency Counsel Section, the State has successfully avoided sanctions for alleged violations of the bankruptcy automatic stay. In a different case, the bankruptcy court affirmed a consumer fraud judgment obtained in state court, denying requested sanctions based upon the full faith and credit clause. In yet another action, fraudulent conveyance claims against the State were dismissed pursuant to the sovereign immunity doctrine. Additionally, the State has established a presence with the National Association of Attorneys General in multi-state fraudulent conveyance litigation involving 23 states.

## Major Case Highlights

### *Diaz v. Brewer*

U.S. District Court No. 2:09-cv-2402. Originally filed in 2009, this case sought an order requiring the State to provide “domestic partner” health coverage for unmarried State employees in same-sex relationships after the Legislature acted to restrict such coverage to spouses. Case dismissed over plaintiffs’ opposition January 13, 2015.

### *Fields v. EORP*

Maricopa Superior Court No CV2011-017443. On July 8, 2014, the superior court entered its final order denying the Plaintiff class of retired judges any award of attorneys’ fees against the State or the Elected Officials Retirement Plan.

### *National Association for Advancement of Multi-jurisdictional Practice et. al. v. Arizona Supreme Court et.al.*

U.S. Supreme Court No. 14-1165 is a case, filed October 29, 2012 challenging Supreme Court Rule 34(F) that allows admission on motion only to lawyers coming from other states offering reciprocity to Arizona Lawyers. Defendant’s motion for Summary Judgment was granted by the Arizona District Court, affirmed by the 9th Circuit Court of Appeals and cert. and rehearing denied by U.S. Supreme Court August 20, 2015.

## Significant Matters

ACS provided the Review and certification of \$342,565,000 bond issue for the Water Infrastructure Finance Authority. Responded to requests on 47 Industrial Development Bonds, totaling \$1,813,900,000, for a review of whether each project met the requirements of the statutory definition of the project.

# State Government Division (*continued*)

## EDUCATION & HEALTH SECTION

The Education & Health Section (EHS) is comprised of a Health Unit and an Education Unit. The Health Unit represents the Arizona Department of Health Services, including the Arizona State Hospital, the Division of Behavioral Health Services, the Divisions of Public Health Services-Licensing, Prevention, and Preparedness. The Health Unit also represents the Arizona Commission for the Deaf and Hard of Hearing. The Education Unit represents the Arizona Department of Education, 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, and the Professional Practices Advisory Committee.

### Major Accomplishments

We had a successful resolution in *Arnold v. Sarn*, the thirty (30) year old class action lawsuit involving the care and treatment of seriously mentally ill persons.

Participated in arguing *Flores v. Huppenthal* before the Ninth Circuit, and in achieving an affirmance of the District Court's decision finally dismissing this 20-year-old challenge to the way Arizona educates its English Language Learners.

## HEALTH UNIT

### Major Case Highlights

#### 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 requirements for abortion clinics. These new laws require abortion clinics to follow the FDA protocol if they perform medication abortions. Planned Parenthood named Will Humble, then Director of the Arizona Department of Health Services (ADHS), in his official capacity, as the Defendant. EHS has worked with the Solicitor General and Senior Litigation Counsel to defend the new ADHS Director in the various stages of the litigation.

Planned Parenthood challenged the medication abortion requirements in A.R.S. § 36-449.03(E)(6) and A.A.C. R9-10-1508(G) (collectively, "Arizona law"). Planned Parenthood primarily argued that the new laws are unconstitutional in that they constitute an undue burden on a woman's right to choose an abortion, are vague, and they discriminate 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 and/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

# State Government Division (*continued*)

have granted Planned Parenthood's request for a preliminary injunction. In its opinion, the Ninth Circuit reversed the District Court and granted Planned Parenthood's request for a preliminary injunction that stopped the implementation of the new requirements for medication abortion. After the case was remanded for further proceedings, the parties subsequently agreed to a stay in the Federal District Court pending the outcome of a related state court case.

## *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, the then Director of ADHS, in his official capacity, as the Defendant. The new ADHS Director, Dr. Cara Christ, has been substituted into the lawsuit as the proper party Defendant. EHS has worked with the Alliance Defending Freedom (ADF) in the defense of this lawsuit.

In this lawsuit, Planned Parenthood again challenged the new medication abortion law changes 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 initially asserted 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 rule-making procedures as they were stated on its website. It then supplemented its complaint to seek declaratory judgment about how the statute should be interpreted, specifically whether the law applies to all abortion-inducing drugs, whether misoprostol qualifies as an abortion-inducing drug under the law, whether the law prohibits the use of misoprostol in medication abortion, and whether the law is limited to those FDA-approved protocols in place when the law was enacted.

Plaintiffs filed motions for summary judgment on all claims and Dr. Christ filed a motion to dismiss on the first two claims and a cross-motion for summary judgment on the declaratory judgment claims. All of these dispositive motions were argued on August 14, 2015.

## *Planned Parenthood of Arizona, et.al., v. AG Brnovich, Dr. Christ, Medical Boards*

On June 4, 2015, Plaintiffs—abortion clinics and physicians who perform abortions—sued the Attorney General, the ADHS director, and various medical board members and executive directors, in Federal District Court to enjoin implementation of portions of Senate Bill 1318 ("SB 1318"). The challenged portions of SB 1318 relate to an amendment of Arizona's informed consent statute to add disclosure requirements for persons who perform abortions. They are now required to notify their patients that it may be possible to reverse the effects of a medication abortion. In addition, SB 1318 required ADHS to add content to its website regarding a possible reversal of the medication abortion process. Plaintiffs argue that the challenged portions of the bill are unconstitutional, as they allegedly violate the Plaintiffs' 1) First Amendment rights by compelling state-mandated speech to patients about an experimental treatment; and 2) their patients' Fourteenth Amendment rights to receive 'untruthful' information from their physicians.

The Plaintiffs also sought a preliminary and permanent injunction against the implementation of the law. Due to the unavailability of the State's key witnesses for the hearing initially set by the Court, the parties stipulated to a stay of the implementation of the law pending a full evidentiary hearing on the merits scheduled for October 21-23, 2015. EHS is defending the case along with other attorneys in the AGO and with outside counsel.

# State Government Division (*continued*)

## Certificate of Necessity Cases

The Health Unit represented ADHS in two major Certificate of Necessity (CON) hearings.

In the matter of ABC Ambulance, the issue on appeal in the Court of Appeals is whether the new ADHS Director had authority to compromise a final agency decision through a settlement, over the objection of an intervening party.

American Medical Response-Maricopa applied for an initial CON in Maricopa County. A two-week, three-party evidentiary was heard in September and October, 2014, resulting in a CON being issued to a second private provider of ambulance services in Maricopa County.

## Sexually Violent Person (SVP) Cases

*Nickolich v. Arizona Department of Health Services*

On April 2, 2013, Plaintiff, an SVP committed to the ACPTC, filed a special action complaint in Maricopa County Superior Court alleging that the ACPTC failed to comply with its statutory duty to provide him with adequate treatment. The parties conducted discovery, including depositions, over the past year. After discovery, the Plaintiff requested dismissal of the case and the Department stipulated to dismissal on the condition that it would be with prejudice. The case was dismissed with prejudice on July 16, 2015.

## Mental Health Cases

*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. 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 an increase in services to SMIs in return for a dismissal of the lawsuit. The lawsuit was dismissed on September 22, 2014.

## Significant Matters

*Emergency Medical Services and Trauma Systems Program*

The Health Unit attorneys provide general legal advice on a weekly basis to this program. In addition, Health

# State Government Division (*continued*)

Unit attorneys represented the Program in three multi-week Certificate of Necessity (CON) hearings this past year, and will represent the Program in seven more CON hearings that are scheduled for FY16. The Health Unit also successfully represented the Program in three administrative hearings to revoke licenses for Emergency Medical Technicians whose actions were determined to be a threat to the health and safety of Arizona residents.

## *Women, Infants, and Children Program*

In addition to providing general legal advice, the Health Unit represents the Women, Infants, and Children (WIC) Program at informal settlement conferences and administrative hearings regarding vendors' violations of the WIC Vendor Contract and United States Department of Agriculture (USDA) regulations. This year that Health Unit also offered advice during the USDA's audit of the Arizona WIC Program.

## *Health Care Institutions Licensing/Special Licensing*

The Health Unit successfully represented ADHS in an appeal brought by a licensed midwife to suspend her license for acting outside the scope of her duties. The Health Unit also entered into a settlement agreement with a licensee for a Group Home for the Developmentally Disabled. The Health Unit also represented ADHS in an enforcement meeting regarding a hospital and ultimately drafted and entered into a consent agreement with the hospital to address licensing deficiencies.

## *Sexually Violent Persons*

In addition to providing general legal advice regarding the ACPTC's responsibilities in managing the 83 individuals committed to the ACPTC along with 8 pre-trial detainees in custody, the Health Unit represented the ACPTC in multiple annual hearings in Superior Court (through which a Sexually Violent Person seeks placement in either the less restrictive alternative program and/or absolute discharge from the ACPTC), attempted special actions, recurring orders where the Superior Court seeks to dictate a treatment level for a resident or addresses conditions of confinement during annual commitment proceedings, and attempts by resident counsel to improperly expand the scope of discovery in annual civil commitment hearings. In addition, the Health Unit reviewed and filed annual reports for all committed individuals in various Superior Courts throughout Arizona.

## *Health Care Institutions Licensing*

The Health Unit was successful in representing ADHS in 5 health care licensing matters including the denial of an application for an assisted living facility, and successful appeals of the Department's regulation of assisted living and long term care facilities. This included entering into settlement agreements with four facilities and going to hearing on one matter. We were also successful in one appeal brought before the Superior Court by an assisted living facility; this matter has been appealed to the Arizona Court of Appeals and will be briefed this fall.

## *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, record requests, and subpoenas for trial.

## *Behavioral Health Services*

In addition to providing general legal advice, the Health Unit, along with its client, began working with the Arizona Health Care Cost Containment System (AHCCCS) to affect the transition of the State mandated management of behavioral healthcare responsibilities from ADHS to AHCCCS. Transition is scheduled to occur July



# State Government Division (*continued*)

1, 2016. The Health Unit continued to negotiate ADHS' Intergovernmental Agreements for five Tribal Regional Behavioral Health Authorities. The intent of the IGA negotiations is to develop a contract terms that can be used with the tribes going forward. 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 legal advice to the Office on a weekly basis, including advice on the Office's responsibilities in dealing with same sex couples and transgender individuals under Arizona law, the Health Unit successfully represented the Office in 4 administrative hearings to cancel delayed birth certificates that were procured through fraud or misrepresentation, and in getting two Superior Court appeals dismissed.

## *Public Health Emergency Preparedness*

In addition to providing general legal advice, this year the Health Unit participated in Ebola preparedness activities. Health Unit attorneys assisted in the drafting of an MOU between ADHS and other public health entities that defined roles and responsibilities for handling a potential Ebola patient in Arizona. Health Unit attorneys also drafted templates for legal documents in preparation for a potential Ebola case in Arizona. A Health Unit attorney also gave presentations about Arizona's emergency laws at a statewide tabletop exercise to prepare for a potential Ebola case, a graduate class at Midwestern University, and a Center for Disease Control (CDC) course sponsored by the Maricopa County Department of Public Health.

## *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*

Health Unit attorneys conducted over 275 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.

The Health Unit also successfully represented ADHS and the Arizona State Hospital as defendants in a lawsuit brought by Script Media, Inc., which sought the release of certain Hospital documents that the Hospital considered confidential medical records and employee records, and not public records under Arizona law. In its ruling, the Superior Court found that while disclosure to the media was appropriate, the Court allowed the Hospital to thoroughly redact its documents prior to disclosure to protect patient and employee privacy. The Court also denied Plaintiff's request for award attorneys' fees, making no finding that the Plaintiff had "substantially prevailed."

## **Civil Money Penalties**

The Health Unit attorneys participate in the review, negotiation, and prosecution of administrative enforcement actions taken by ADHS against licensed persons or entities. The sum total of 454 administrative reimbursements and civil money penalties assessed by the ADHS for FY 2015 was \$207,440.

# State Government Division (*continued*)

## EDUCATION UNIT

### Major Case Highlights

#### *Acosta v. Huppenthal*

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 District 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 appealed, and Defendants cross-appealed in the Ninth Circuit.

The Ninth Circuit issued its decision on July 30, 2015, upholding the facial validity of subsections (2) and (4) of the statute, but striking down (3). (Subsection (1) was not at issue.) The Court remanded for trial the questions of whether the statute was enacted or enforced with discriminatory intent, and Plaintiffs' viewpoint discrimination claim.

#### *Arizona v. Maricopa County Community College District*

In 2013, Arizona, through the Attorney General, 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 eligible for the federal Deferred Action against Childhood Arrivals (DACA) program, to pay in-state tuition (if they meet Arizona's residency requirements). The United States Department of Homeland Security uses its DACA program 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.

In May of 2015, the Court ruled on dispositive motions filed by all parties, concluding that DACA recipients could be eligible for in-state tuition. Arizona appealed that decision. A Superior Court decision on whether MCCCD and the Student-Intervenors are entitled to attorneys' fees is still pending; together, they seek over \$525,000.00 in attorneys' fees.

#### *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 FY10 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

# State Government Division (*continued*)

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. After the Court held an evidentiary hearing in the fall of 2014 regarding additional equitable defenses to the Plaintiffs' claims and to determine the amount of any repayment, the parties entered into settlement discussions supervised by a panel of Arizona Court of Appeals judges.

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

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 appealed, but the Court of Appeals affirmed the Superior Court in November of 2014; the Arizona Supreme Court then denied review.

## *Fisher v. Tucson Unified School District*

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 appealed the denial of intervention to the Ninth Circuit Court of Appeals, which affirmed the district court.

## *Flores v. Huppenthal*

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 Ninth Circuit affirmed the District Court. It also denied plaintiffs' petition for rehearing by the panel. The deadline for plaintiffs to file a petition for writ of certiorari is November 5, 2015.

# State Government Division (*continued*)

## *McQueen v. Douglas*

Mr. McQueen filed a first amendment retaliation lawsuit against former Superintendent of Public Instruction John Huppenthal, in his official capacity, alleging that he had been removed from various teacher committees because of his statements made against the Common Core. Shortly after removing the matter to Federal Court and filing our answer, we attempted to settle the matter quickly because there was no evidence that such retaliation had occurred. After substantial written and deposition discovery, Arizona Department of Education re-asserted its belief that there were no legal grounds for a claim of retaliation, and attempted again to reach a settlement. The Plaintiff voluntarily dismissed the matter with prejudice in August.

## *Houston v. State Board of Education*

James Houston, a teacher, challenged the State Board of Education's decision to revoke his lifetime substitute teacher license. After the Board denied his request, he filed a judicial review action in Superior Court. After briefing, the Superior Court affirmed the Board and upheld the revocation.

## *Arizona v. SIATech*

The Arizona Department of Education (ADE) audited Arizona School for Integrated Academics and Technologies, Inc. (SIATech), a charter school, and found it owed \$4.7 million, because it had substantially overstated its Average Daily Membership for fiscal years 2010-12, by counting students enrolled at a companion Job Corps program as full-time students, even if they only attended SIATech part-time or not at all. SIATech initially appealed the audit findings, but then voluntarily withdrew its appeal. ADE then issued a final administrative order, requiring payment of the \$4.7 million. SIATech failed to pay the amount due, so the Attorney General brought an action under A.R.S. §§ 35-211 and 212, to recover monies illegally paid. The action is proceeding.

## Significant Matters

### *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 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.
- 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 Agree-

# State Government Division (*continued*)

ment 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 the Department of Education's audit unit in connection with audits against the districts and charter schools.

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

- Reviewed and revised Board meeting agendas for compliance with Open Meeting Law and 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 one disciplinary hearing before the PPAC.
- 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.
- Advised ASDB in connection with a substantial public records request and assisted with responding to demands by a parent of a student who was extremely unhappy with ASDB's actions and who has threatened to file a claim.
- 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.



# State Government Division (*continued*)

## *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 the financial disclosure kit required for 529 college savings plans from Waddell and Reed (Ivy Funds) for compliance with federal and State requirements, including the College For the Arizona Commission for Postsecondary Education, the trustee of the Arizona 529 College Savings Plan, drafted agreements to ensure the continued integrity of the College Savings Bank 529 College Savings Plan as it prepared to merge or be acquired by the Inland Bank and Trust. Eventually, the Securities and Exchange reversed its earlier preliminary approval of the plan.
- Reviewed and revised a draft data sharing agreement with the United States Department of Education that authorizes access to federal data regarding the completion status of Free Application for Federal Student Aid forms.
- Drafted data sharing agreement to allow high schools to track and assist students to complete a Free Application for Federal Student Aid form.
- Drafted agreements to assign certain contractual obligation from the ACPE to the Arizona College Scholarship Program Savings Plans Network Disclosure Guidelines Statement #5 and the Internal Revenue Code.

## *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.
- Assisted the AGO in certifying that the Refunding Certificates of Participation issued by SFB were in compliance with Arizona law.

## *Attorney General Opinions*

- Reviewed seven requests for an Attorney General Opinion, drafted four opinions and recommended that decline to review letters be issued in response to three requests.

## *Dollars Generated or Saved*

- Advised the Arizona School Facilities Board (SFB) in connection with one (1) financial transaction that will save the state almost \$14,000,000 in lease-purchase payments. The SFB refunded the 2008 series of Certificates of Participation.
- Assisted the SFB in saving over \$75,000 by drafting documents to convince the United States Department of Energy to authorize alternative remedial action for the inadvertent violation by a school district of the Buy American Act in a federally funded School District Solar Energy Project. This decision allowed the Vernon Elementary School District to keep the installed solar panels and for the amount of the Federal grant to the State to not be reduced.
- By winning the Craven case, we have potentially saved the State several hundred million dollars in additional school funding for charter schools.

# State Government Division (*continued*)

## EMPLOYMENT LAW SECTION

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

### Major Accomplishments

#### ELS ADVICE AND HEARING UNIT

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

ELS provided over 3300 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 Agencies, Boards and Commissions regarding employment issues involving senior staff. In addition, ELS provided advice regarding the transition to new administrations following the 2014 state election.

##### *ELS provided extensive training to supervisors and agencies statewide*

ELS believes that a key to preventing EEOC charges and lawsuits against the State of Arizona is to train state employees, especially supervisors, on various employment laws ranging from discrimination statutes to wage and hour to medical leave and disability law. In FY14-15, ELS provided 27 separate trainings to agencies throughout the State of Arizona. This includes six 4-hour "new supervisor" training sessions for the Arizona Department of Administration to ensure every new supervisor in state government receives basic employment law training.

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

ELS opened 37 new administrative appeals brought by employees regarding their discipline/terminations and spent 1867 hours preparing for and litigating those hearings. Significant matters include the following:

##### *Godinez-Galvan v. ADC*

This case involved a prohibited personnel practice or "whistleblower" complaint brought by a Department of Corrections ("ADC") employee against her Warden and two other upper management personnel at ADC. The complaint alleged that the employee was retaliated against for writing a "whistleblower letter" to the ADC Director when the employee was denied a request to a different facility. After an evidentiary hearing, the complaint was dismissed by the State Personnel Board. The Board determined that there was no evidence that the manager, who was the ultimate decision maker in denying the transfer request, had any knowledge of the existence of the whistleblower letter to the Director and therefore could not have retaliated against the employee for writing the letter.

##### *Prewitt v. Yavapai County Juvenile Probation*

The employee worked for the Yavapai County Juvenile Probation Department as a Probation Officer. On February 28, 2014, Ms. Prewitt had a brief encounter with another Probation Officer during which she struck her

# State Government Division (*continued*)

co-worker in the upper right arm and made an offensive gesture at her. The co-worker reported the incident to her supervisor. There were no other witnesses to the striking. Ms. Prewitt initially claimed that she did not remember the incident. Later, she posed a hypothetical that she may have bumped into her and that her co-worker may have embellished the story at the encouragement of other co-workers. The Department terminated her employment. The employee appealed her termination. The Yavapai County Employee's Merit System Commission heard the appeal and accepted the credibility of the co-worker who was struck, finding that the conduct violated the department's policies regarding standards of conduct and performance, workplace safety and violence, and policy on professional office etiquette.

## WORKERS' COMPENSATION

ELS's workers' compensation group opened 111 new matters and closed 88 matters, numbers which are consistent with the past three years. ELS lawyers and legal assistants billed 4025 hours to workers' compensation matters.

## 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 26 new risk-management lawsuits during the last fiscal year. Attorneys and legal assistants billed over 7836 hours on risk-management litigation matters (lawsuits, claims and EEOC charges). In addition, ELS attorneys also spent 672 hours representing client agencies in administrative review actions and non-risk management special actions and lawsuits in superior court and the court of appeals.

### *Harper v. DCS*

Five supervisors at the Arizona Department of Child Safety were dismissed by the Director following an investigation by the Department of Public Safety regarding the disposition of several thousand uninvestigated reports of child abuse or neglect. The five employees brought suit claiming that even though they were at-will employees, the employees were just following orders, therefore their termination violated public policy and was wrongful under the Employment Protection Act. The State moved to dismiss and the Superior Court granted the dismissal, holding that as at-will employees the Department was in its rights to terminate their employment.

### *Scorzo, et. al. v. Arizona Medical Board*

The Medical Board's director terminated two employees in the fall of 2011. In October of 2013, following a publicized report by the Arizona Ombudsman's Office of licensing irregularities, the director was dismissed. In October 2014, plaintiffs brought a wrongful termination lawsuit against the Medical Board claiming that the former director terminated them in retaliation for their complaints of licensing irregularities. The State moved to dismiss the complaint because it was brought beyond the statute of limitations. Plaintiffs argued that their lawsuit was timely because the statute of limitations did not begin to run until the Ombudsman's Office issued its report agreeing with their allegations of licensing irregularities. The Court granted the State's motion to dismiss, finding that the timeframe to file their lawsuit began at the time the plaintiffs were terminated in 2011.

## DISCRIMINATION CHARGES

ELS monitored and assisted agencies in responding to 138 new charges of discrimination filed with the federal Equal Employment Opportunity Commission, up from 90 the previous year. ELS closed 88 discrimination charges.

# State Government Division (*continued*)

## LIABILITY MANAGEMENT SECTION

The Liability Management Section represents the State and its employees in cases based on allegations of tort claims and civil rights violations in which money damages are demanded.

### Major Accomplishments

The hourly rate for cases defended by the Liability Management Section (“LMS”) this year was \$99. In comparison, the average rate for outside counsel appointed to defend LMS cases where there was no conflict was \$262 per hour.

The Section’s goal is to minimize the number of non-conflict cases sent to outside counsel because its lawyers and staff defend the cases at a much lower cost. The total outside counsel attorneys’ fees paid in non-conflict LMS cases in FY015 was \$483,598.50, a decrease of over \$600,000.00 from FY2014. Because fewer non-conflict cases were sent to outside counsel, the Section achieved its goal with the intent to realize further realize reduction.

### Major Case Highlights

*Glazer v. ADOT, et.al.*

The Plaintiffs alleged ADOT was negligent in its design of I-10 in the 1960s, and that changed conditions required ADOT to improve the highway even if it met standards when it was designed. The AZ Supreme Court upheld the validity of A.R.S. § 12-820.03 which provides an affirmative defense to liability claims where the plan or design was prepared in conformance with accepted engineering standards in effect at the time of the design.

### Cost Savings to the State

For cases closed in FY14-15 the Tort Unit received claims against the State and its employees totaling more than \$241,916,508, and resolved them for \$2,142,610. These figures demonstrate a tremendous savings to the State of Arizona from the work of LMS.

## LICENSING ENFORCEMENT SECTION

LES represents over forty state agencies, boards and commissions. Its attorneys act as “general counsel” for these entities, and also provide representation in administrative hearings before the Office of Administrative Hearings, in the Superior Court in connection with judicial review actions, special actions and subpoena enforcement actions, as well as in the Court of Appeals. LES also assists in the rule making process, monitors and provides input on legislation, and ensures compliance with open meeting, public records requests, and statutory changes.

### Major Accomplishments

LES obtained the largest civil penalty ever levied by the Registrar of Contractors (ROC) \$100,000.00. It also regularly refers matters to other sections in the office to take appropriate action beyond administrative processes. For example, it sent another Registrar matter to Consumer Protection for prosecution, resulting in a settlement of \$99,500.00. It also represented client agencies in over 300 administrative hearings.

### Major Case Highlights

*Patriot’s Land Group and Elks Lodge*

These are related appeals challenging the Liquor Department’s determination that a “sweepstakes” machine was unlawful gambling. In both cases the Liquor Department was upheld by the Court of Appeals.

*Paddock Pools and Cameo Pools*

LES successfully defended the ROC’s summary license suspension, and obtained license revocations. The companies had taken tens of thousands of dollars in deposits from consumers, but failed to perform any work, or abandoned the projects before completion.

# State Government Division (continued)

<i>Civil Assessments and Penalties</i>	<i>Penalties (in dollars)</i>
Nursing Board	\$1,450.00
Arizona Medical Board	\$10,000.00
Private Postsecondary Education	\$1,000.00
Behavioral Health Examiners	\$1,000.00
Department of Weights & Measures	\$284,500.00
Board of Cosmetology (including cases recovered)	\$290,215.00
Barber Board	\$2,000.00
Chiropractic Board	\$3,000.00
Physical Therapy Board	\$2,000.00
Racing Commission	\$33,835.00
Liquor	\$472,315.00
Accounting	\$94,800.00
Fire Building and Life Safety	\$12,300.00
Respiratory Care Examiners	\$7,927.00
Registrar of Contractors	\$500,000.00
Naturopathic Board	\$5,000.00
Dental Board	\$9,500.00
Osteopathic Board	\$100.00

In addition, LES successfully defended over \$200,000.00 in claims made against the Registrar's Residential Contractors Recovery Fund.

## NATURAL RESOURCES SECTION

NRS provides representation to a variety of State agencies, primarily the Arizona State Land Department (ASLD). The ASLD manages over nine 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, the Board of Geographic and Historic Names, Arizona Geological Survey (the State Geologist) and the State Forestry Division. NRS also reviews plans submitted by counties and municipalities to ensure planning and zoning is compatible with the operation of nearby military airport facilities.



# State Government Division (*continued*)

## Major Accomplishments

### *State Trust Land Revenues*

The Natural Resources Section (NRS) continued to provide substantial support to the Arizona State Land Department (ASLD) in achieving its mission to generate revenues for public purposes, including the support of the common schools. There has been a lag in the real estate market, with extensions on Certificate of Purchase payments, and more significantly defaults and cancellations of Certificates of Purchase, however the ASLD continued to generate revenues from sales and long-term leases. NRS attorneys were instrumental in providing advice on these transactions and in preparing and reviewing the documents that facilitated these transactions. NRS provided legal support to advance the ASLD's generation of \$100 million in sale and long-term lease revenue during the fiscal year.

## Major Case Highlights

*'Division of Occupational Safety and Health of the Industrial Commission v. State of Arizona, Arizona State Forestry Division*  
NRS provided significant support to Arizona State Forestry Division's (ASFD) and to outside counsel in the representation of the ASFD opposition to the Division of Occupational Safety and Health (ADOSH) citations pertaining to ASFD's handling of the Yarnell Hill Fire suppression efforts. The fire resulted in the deaths of nineteen firefighters. NRS was involved in case preparation, pre-hearing motions and in negotiations for the settlement of the ADOSH citations. A settlement was reached that significantly reduced the monetary exposure of the State and changed the willful and serious classifications of violations to unclassified. ASFD agreed to provide enhanced safety training, additional fire suppression activities, and improved wildland firefighter safety.

## Significant Matters

*APS / TS-5 to TS-9; L-00000D-08-0330-00138*

NRS represented ASLD before the Arizona Corporation Commission to amend the proposed Arizona Public Service / Morgan to Sun Valley route of a power line in unincorporated Maricopa County northwest of Surprise. As previously approved, the four mile segment of line would bifurcate and accordingly diminish the value of a parcel of State Trust Land which ASLD wished to preserve as an uninterrupted whole for purposes of planning and disposition. After an evidentiary hearing, the Commission's administrative law judge recommended re-routing the line in a configuration which increased the size of the unified parcel of State Trust Land by nearly three square miles, while preserving a corner that allays the concerns of existing residents and accommodates the route of a planned arterial road. The full Commission approved the amended route on May 12, 2015.

### *Arizona Navigable Streambeds Commission Proceedings*

NRS continues to represent the State Land Commissioner in proceedings before the Arizona Navigable Streambeds Commission ("ANSAC"). The ANSAC is responsible for determining the navigability of all Arizona watercourses for title purposes. The State Land Commissioner has a statutory duty to advocate for the public trust, to promote public trust interests, and challenge the ANSAC's decisions as necessary to protect public trust interests. NRS represented the State Land Commissioner in submission to ANSAC of evidence supporting the navigability of the Gila River, the Verde River and the Salt River. NRS presented evidence and briefing and closing presentation in the Gila River hearings, and presented evidence in the Verde hearings.

# State Government Division (*continued*)

## *University Lands Re-designation*

NRS provided legal support to ASLD in completing a re-designation of beneficiaries between the universities and common schools for equally-valued and equally-sized parcels of State Trust Land in Phoenix and New River. The re-designation was approved by the State Selection Board on September 11, 2014. The re-designation facilitated the subsequent disposition at auction on December 22, 2014, of a long-term commercial lease valued at \$7,250,000 to Arizona State University, which intends to develop the parcel in Phoenix adjacent to the Mayo Clinic Hospital for a health education and bioscience research facility.

## *Florence Copper Lease Renewal*

NRS represented the ASLD in completing the renewal of a state mineral lease to Florence Copper, Inc., on a site intended for in situ copper mining. Initial exploration estimates over 700 million pounds of copper may be recovered from the state trust parcel. If Florence Copper can proceed to obtain the necessary permits and begin mining, it is estimated that the State Land Trust would earn over \$100 million in royalties over the 20 year life of the mine.

## *Transactional Support*

NRS provides 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. NRS continued to work with the ASLD in its efforts to accomplish commercially reasonable workouts with installment purchasers and long term ground tenants who have been unable due to market conditions to meet installment purchase payment obligations and ground lease rent obligations. NRS assisted the ASLD in drafting and structuring the sale of trust land on which a long-term lease for retail shopping center was located. NRS produced documents to address termination of the existing lease and to address subtenant issues for a seamless transfer if a third party was the successful bidder.

## *Assistance on Parks Contracts*

NRS is assisting the Parks Board in processing RFPs for major new concession contracts for the management of six state parks. NRS has also been assisting the Parks Board in finalizing arrangements for the wind-down of an existing concession for another State Park.

## *Gila River Adjudication*

NRS continues to represent the State as a claimant in the water rights adjudications with a major focus on contested cases on federal reserved rights. In particular NRS reviews a large volume of submissions pertaining to a number of contested cases, NRS argued successfully against the federal government's claim to a federal reserved right in State Trust Land for a federal wilderness area and NRS coordinated with State agencies to respond to discovery related to a federal reserved right claim for a military reservation.

# State Government Division (*continued*)

## TAX SECTION

The Tax Section represents the Arizona Department of Revenue (“ADOR”) in property tax, income tax, transaction privilege (sales) and use tax, and various other tax areas. It also represents the Arizona Department of Transportation (“ADOT”) in fuel tax and aircraft license matters. The Tax Section represents ADOR and ADOT in administrative hearings and lawsuits filed by taxpayers, and advises both on tax matters outside of litigation.

### Major Accomplishments

The Tax Section’s roles are to defend the integrity of State tax laws, to ensure that such laws are uniformly and fairly enforced, and to assist its two client agencies in the imposition and enforcement of such laws. In that regard, the Tax Section had several notable victories the past year, including those set forth below.

### Major Case Highlights

#### *SolarCity v. ADOR*

Two “distributed solar” energy companies, those that install solar equipment on their customers’ improved properties as opposed to building large (traditional) solar arrays on vacant land, challenged ADOR’s attempt to value their distributed generation equipment for property taxation purposes. ADOR values the real and personal property of traditional solar generators, and believed that under the Uniformity Clause of the State Constitution, the solar properties of distributed solar companies needed to be valued and taxed also. The Uniformity Clause and applicable case law require that the like properties of business competitors be valued and taxed uniformly. The Arizona Tax Court agreed, holding that exempting the solar properties of distributed generation companies would be unconstitutional under the Uniformity Clause. Tens and potentially hundreds of millions of dollars of property will be added to the tax rolls if the ruling is upheld, reducing the property tax burden on others, and other electrical generators who do pay property taxes on their electrical generating equipment will be ensured of a level playing field.

#### *Saban v. ADOR*

Car rental companies filed a class action challenging the constitutionality of a transaction privilege (sales) tax (“TPT”) on income earned by those companies from their rental of vehicles. The companies sued both ADOR and the Arizona State Tourism Authority (“AzSTA”), a municipal corporation created in part to fund the construction and operation of sports stadiums for tourism purposes. The Tax Section, on behalf of ADOR, and AzSTA, which was separately represented by its own counsel, defeated Plaintiffs’ claim that the tax violated the Dormant Commerce Clause of the United States Constitution. ADOR and AzSTA lost on Plaintiffs’ claim that the tax violated a State constitutional provision that allegedly requires that TPT relating to vehicle rentals be used only for roadway purposes. While both issues will be appealed, the Tax Section won a subsequent ruling that as between the State and AzSTA, AzSTA and not the State is ultimately liable for the payment of refunds, refunds that could approach \$150 million.

#### *SouthPoint Energy v. ADOR*

Plaintiff, a non-Native American company, constructed a large energy generation facility on Native American land. Plaintiff argued that the plant was exempt from valuation by ADOR and exempt from property taxation, in part because of a recent Bureau of Land Management regulation relating to the taxation of non-Indian improvements on tribal lands. The Department prevailed in the Arizona Tax Court, and the matter is currently

# State Government Division (*continued*)

being appealed to the Arizona Court of Appeals. Property taxes are a main source of revenue for local school districts, and this ruling implicates many non-Indian business improvements located on Native American lands throughout the State.

## *Arizona Cattle v. ADOR*

The owners of many large cattle ranches in Yavapai County sued the County and ADOR alleging overvaluation and illegal taxation of their ranch properties after the County Assessor had tripled the value of their grazing lands from tax year 2011 to tax year 2012. In addition to seeking lower valuations in general, the ranchers asked the Arizona Tax Court to order the Assessor to use federal and State land lease rates to value their grazing properties, rates that are set by statute or rule as opposed to rates determined in the marketplace. Following trial, the Court agreed with ADOR and the County that government lease rates not be used to determine the value of grazing land, in large part because they are not reflective of true market rental rates, rates that are significantly higher than those charged by State and federal governments. The valuations of all private grazing lands in the State for property taxation purposes are implicated by this ruling.

## Cost Savings to the State

It is very difficult to measure cost savings to the State from the Tax Section's victories and partial victories in our representation of the ADOR. In property tax cases, the savings from a victory rarely if ever inure to the State, because although ADOR values some properties (as opposed to county assessors) and defends those values in administrative hearings and in court, the resulting property taxes almost always are paid to local taxing entities (school districts, fire districts, community colleges, etc.).

In transaction privilege tax matters, the savings from a victory are usually exponentially greater than the amount at issue in any given case, because a victory against one taxpayer, such as a retailer, might preclude tens or even hundreds of other taxpayers from making and prevailing on similar claims. Suffice it to say that the efforts of the Tax Section every year safeguard the collection of tens of millions and occasionally hundreds of millions of dollars in tax revenue, whether in the form of tax collections or the prevention of tax refunds.

Tax savings to ADOT, whose cases are far more discrete and measurable, totaled approximately \$1,750,000 in the past fiscal year.

## TRANSPORTATION SECTION

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. 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. Represent ADOT's Motor Vehicle Division by defending administrative decisions which may be subsequently appealed to Superior Court, and then to the Arizona Court of Appeals. We also represent the Arizona Department of Public Safety in regard to a host of licensing and certification issues, including concealed weapon permits, private investigators and security guards, criminal history record information, and a statewide sex offender registration database. Representation is also provided to a wide range of boards, commissions, and committees, including the Transpor-

# State Government Division (*continued*)

tation Board, the Priority Planning Action Committee, the Law Enforcement Merit System Council, the Over-Dimensional Permit Council, the Arizona Council for D.U.I. Abatement, the Arizona Motorcycle Safety Advisory Committee, the Citizens Transportation Oversight Committee, the Arizona Companion Animal Spay and Neuter Committee, ADOT's Homeland Security Committee, MVD's Medical Advisory Board, and the School Bus Advisory Council.

## Major Accomplishments

Assisted ADOT in preparing documents and procedures for procurement of an agreement to design, build and maintain the L202 South Mountain Freeway under a public/private partnership (P3) arrangement. The L202 S. Mtn. project will be ADOT's largest single construction project, with costs estimated at just under \$2 billion. The process of selecting a contractor is underway, and contract award is anticipated in February of 2016.

Reviewed and revised a Memorandum of Understanding between ADOT and Mexico regarding cooperation and consultation in the operation of border ports of entry.

Reviewed and revised a proposed Reciprocity Agreement between MVD and Taiwan regarding driver license testing for recently arrived foreign nationals, along with proposed legislation to explicitly authorize the program.

## Major Case Highlights

### *State v. DTD-Devco*

Prevailed before the Court of Appeals, where the appellate court upheld the lower court's grant of Summary Judgment awarding compensation in the amount of ADOT's valuation evidence when the property owner failed to comply with court ordered discovery and disclosure deadlines. A Petition for Review is currently pending before the Arizona Supreme Court.

### *Quigley v. ADOT*

Prevailed before the Court of Appeals, where the appellate court upheld the lower court's dismissal of an administrative appeal related to a driver license suspension based on insufficient service of process.

### *Scharrer v. Brnovich, et.al.*

Successfully defended the State in a District Court civil rights action attacking the constitutionality of Arizona's sex offender risk assessment system. The matter was dismissed after plaintiff repeatedly failed to provide discovery and disclosure information.

### *Bison Contracting v. State*

Represented the State in a construction contract claim related to ADOT's SR 89 Granite Creek Bridge project. Plaintiff sought \$10,000,000 in damages as a result of differing site conditions, access and de-watering issues. The matter settled for \$3,600,000.

### *Boruch et.al. v. State*

Plaintiff sought declaratory judgment in an action related to flooding of numerous homes during an unusually heavy rainstorm, alleging ADOT and the City of Mesa allowed water channeled into US 60 drainage facilities to overflow into an adjacent neighborhood. The matter was dismissed by the Superior Court and is currently on appeal.



# State Government Division (*continued*)

## *State v. Southern & Meridian Holdings*

Represented ADOT in a Pinal County condemnation case filed to acquire property needed for improvements to US 60. The landowner was seeking \$2,989,522 for 6.17 acres of land. Following mediation, the matter settled for \$893,808, which was \$2,095,000 less than the property owner's original demand.

## *State v. Prairie Dog Investments*

Represented ADOT in a Maricopa County condemnation action to acquire 37 acres needed for the Gateway Freeway, L202 at Ellsworth and Ray Rd. The matter was settled for \$525,000, which was \$1,691,000 below the property owner's initial demand.

## Significant Matters

Nossaman LLP has been appointed outside counsel to represent the *State in PARC v. FHWA/ADOT*. Plaintiffs' suit challenges the sufficiency of the Environmental Impact Statement prepared in regard to the L202 S. Mtn. Freeway project. Plaintiffs allege federal NEPA violations, including failure to adequately consider air toxins, traffic impacts, wildlife corridors and a host of others. Plaintiff's request for a preliminary injunction was recently denied.

## Cost Savings to the State - Totals

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 \$17,366,269.

## Civil Assessments and Penalties – Totals

Filed four motor carrier enforcement cases before MVD's Executive Hearing Office which resulted in civil penalties totaling \$10,000.

# Solicitor General's Office



Solicitor General John Lopez

## MISSION:

*The Solicitor General's Office provides leadership in federalism litigation, criminal appeals and capital litigation, civil appeals and election law, legal opinions, library and research services, ethics, continuing legal education, public access laws, and independent advice. It is committed to excellence, fairness, and integrity.*

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### Division Summary

The Solicitor General's Office is responsible for:

- Protecting the State of Arizona's interests through federalism litigation
- 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

## THE FEDERALISM UNIT

### Overview of Accomplishments

#### Section Highlights

The Federalism Unit will consist of four attorneys, plus a supervisor. (Presently, the Unit consists of two attorneys and a supervisor, with hiring in process to fill the remaining two attorney positions). The Federalism Unit will include two support staff members.

The Federalism Unit is currently handling or participating in several notable cases involving the defense of state law or challenges to federal laws, including *Arizona Dream Act Coalition v. Brewer*, a Ninth Circuit appeal challenging the constitutionality of the federal DACA program and the district court's order that the Arizona Department of Transportation issue driver's licenses to DACA recipients; *Puente Arizona v. Joseph Arpaio, et. al*, a Ninth Circuit appeal challenging the district court's order finding that federal law preempts Arizona's identity theft statute; *Texas, et. al, v. United States*, a lawsuit filed by a coalition of 26 states against the federal government in district court in Texas challenging the constitutionality of the federal DAPA program; and *State of North Dakota, et. al, v. EPA*, a

# Solicitor General's Office (*continued*)

lawsuit filed by a coalition of 13 states against the Environmental Protection Agency challenging the legality of the EPA's final rule concerning "Waters of the United States."

In addition to its involvement in active federalism litigation, the Federalism Unit continues to actively consult with state government and private sector stakeholders to research and anticipate federal regulatory actions that may infringe upon the State of Arizona's right to self-governance.

## CRIMINAL APPEALS SECTION & CAPITAL LITIGATION SECTION

### Overview of Accomplishments

In Fiscal Year 2015, the Criminal Appeals Section and Capital Litigation Section worked to uphold the convictions and sentences of criminal defendants in Arizona. The Sections filed 915 briefs, habeas answers, petitions for review, and responses to petitions for review, and other substantive motions and responses, including evidentiary hearing and oral arguments. 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 15 attorneys
- Support staff for both sections consists of 15 members

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 appellate 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 law-

# Solicitor General's Office (*continued*)

yers 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, the last two years have been relatively stable, with only one attorney leaving in Fiscal Year 2014 and two leaving in Fiscal Year 2015. 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 currently manageable given the present stability, increased productivity, and the talent of our newly-hired attorneys.

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

### *Clark v. Arnold*

The Ninth Circuit Court of Appeals upheld the conviction of Eric Clark for the murder of Flagstaff Police Officer Jeffrey Moritz, a case tried by our office in 2003. This case had previously made it to the United States Supreme Court, which held: (1) Arizona's insanity statute complies with due process; and (2) the defendant had not shown that the state trial court improperly excluded "observation evidence" that would negate the mens rea for the offense. *Clark v. Arizona*, 548 U.S. 735 (2006). Notably, this was the first time any court had ever used the term "observation evidence." In the subsequent federal habeas proceedings, the Ninth Circuit rejected Clark's contention that his trial counsel was ineffective for failing to preserve an "objective evidence" claim in the state courts, re-emphasizing that counsel's performance must be judged based on the law existing at the time of a defendant's trial, and that deference is owed to state court rulings in federal habeas review.

### *State v. Evans*

The Arizona Supreme Court rejected the defendant's argument that, in order to justify an investigatory stop, the prosecution is required to show that the conduct observed by a police officer eliminates a substantial portion of innocent persons. Instead, the court held that all the State is required to show is that the officer had particularized reasonable suspicion of criminal activity. The court also emphasized that the mere fact there may be an innocent explanation for what appears to be criminal conduct does not mean a police officer does not have reasonable suspicion for a stop. This is an important decision for law enforcement and allows police officers to make investigatory stops based on their experience and common sense without engaging in overly complex determinations of possible hypotheses of innocence.

# Solicitor General's Office (*continued*)

## *State v. Gilstrap*

We urged the Arizona Supreme Court to adopt the “possession” test—rather than the far more defense-oriented “relationship” or “actual-notice” tests—in determining whether law enforcement officers may search personal belongings (such as purse) of persons not named in the warrant when executing a search warrant on a home. The court wrote that “the possession test’s simplicity, precision, and the guidance it offers to police and courts make it superior to the relationship and actual-notice tests.” This was a significant victory because, if the court had adopted either of the other two tests, police, prosecutors, and courts would have struggled to discern and apply the test on a case-by-case basis.

## *State v. Valenzuela*

The Arizona Court of Appeals held that informing DUI suspects that they are legally required to provide a blood, breath, or urine sample pursuant to Arizona’s implied-consent law is not unconstitutionally coercive, and, thus, providing such information to DUI suspects does not render subsequent compliance involuntary. This constitutional issue is critically important to law enforcement because it is implicated in the majority of DUI stops.

## *State v. Welch*

The Arizona Court of Appeals held that, although a person has a reasonable expectation of privacy in his personal computer, that privacy expectation disappears when the person knowingly downloads files on a file-sharing network, even if the identity of the person and his computer remain private. Based on that holding, the court upheld the warrantless search and seizure of the defendant’s computer, which led to the recovery of computer files containing child pornography.

## Major Accomplishments – Capital Litigation Section

It has been another challenging year for the Capital Litigation Section. The Section was faced with the departure of several high-producing attorneys, which required it to operate with multiple vacancies during the last half of the fiscal year. Nonetheless, the Section’s attorneys effectively litigated a tremendous number of cases.

The special appropriation obtained from the Arizona Legislature during fiscal year 2014 to litigate state post-conviction cases has been critical to the Section’s operation. This appropriation funded several attorney and staff positions dedicated to representing the State in post-conviction relief proceedings in state court. The four additional attorneys funded through this appropriation have done an exceptional job responding to numerous petitions for post-conviction relief and presenting the State’s case during several evidentiary hearings.

Attorneys in this Section handle capital direct appeals, federal habeas litigation, and state post-conviction proceedings. There are currently 120 capital cases on appeal in Arizona.

### A. Executions

Joseph R. Wood

Execution Date: July 23, 2014

Date of Crime: August 7, 1989

#### Crime Summary:

Wood and his 29-year-old ex-girlfriend, Debbie Dietz, had been involved in a turbulent relationship for five



# Solicitor General's Office (*continued*)

years, which had been marred by numerous breakups and several domestic violence incidents. Debbie worked at a Tucson body shop owned by her family. On August 7, 1989, Wood walked into the shop and shot Debbie's father, Eugene Dietz, in the chest with a .38 caliber revolver, killing him. Eugene's 70-year-old brother struggled with Wood, but Wood pushed him away and proceeded to another section of the body shop, where Debbie was working. Wood approached Debbie, grabbed her around the neck as she tried to telephone for help, and shot her twice in the chest, killing her.

Unit Chief Jeffrey Sparks was lead counsel for the execution-related litigation, and former Chief Counsel Jeffrey Zick, current Chief Counsel Lacey Gard, Special Assistant Attorney General John Todd, and former AAG Matthew Binford served on the litigation team.

## **B. Cases in the United States Supreme Court**

The Wood execution team, led by Unit Chief Jeffrey Sparks, successfully requested the United States Supreme Court to vacate the Ninth Circuit Court of Appeals' decision staying Wood's execution on First Amendment grounds until Arizona had disclosed, *inter alia*, the source of its execution drugs, which is confidential by statute. Based on outstanding briefing by Jeffrey Sparks, the United States Supreme Court summarily vacated the Ninth Circuit's order.

In addition, Unit Chief Laura Chiasson authored an amicus brief, which 13 other states joined, in support of Washington in *Glebe v. Frost*. The Supreme Court had granted certiorari to review the Ninth Circuit Court of Appeals' determination in a habeas case that restricting (without completely denying) a defendant's closing argument constitutes structural error requiring automatic reversal. The Supreme Court ruled in Washington's favor, and consistent with the arguments in Arizona's amicus, held that it had never clearly established that restricting a defendant's closing argument constitutes structural error and that the Ninth Circuit should not have granted relief under the Anti-terrorism and Effective Death Penalty Act.

## **C. Cases in the Ninth Circuit Court of Appeals**

Following the decision of the United States Supreme Court in *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), the Ninth Circuit Court of Appeals remanded 15 capital cases to Arizona's district court for supplemental briefing. In addition, several Ninth Circuit cases awaiting final ruling were stayed pending the court's en banc ruling in *McKinney v. Ryan*, which was argued by former Chief Counsel Jeffrey Zick in December 2014 and has yet to be decided.

Consequently, the Ninth Circuit Court of Appeals issued only one opinion in an appeal from the denial of habeas relief in a capital case in fiscal year 2014: *Mann v. Ryan*. Although Mann was an adverse ruling to the State, the court has ordered that it be reheard en banc in January 2016.

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

The Arizona Supreme Court considered only three capital cases on direct appeal during fiscal year 2014. This was an unusually low number of cases; during the previous fiscal year, the court considered eight cases. Nonetheless, the court affirmed the death penalty in two cases which are summarized below.

# Solicitor General's Office (*continued*)

## *State v. Jonathan Burns*

Jonathan Burns was sentenced to death in Maricopa County Superior Court for the 2007 kidnapping, sexual assault, and murder of Jackie Hartman. On appeal, Burns raised many issues, including the admissibility of certain witness testimony, the admissibility of his statements to police, and prosecutorial misconduct. The court rejected all of his claims and also found that the jury did not abuse its discretion by finding that the mitigation presented was not sufficient to warrant leniency. Unit Chief Jeff Sparks did an excellent job briefing and arguing this case.

## *State v. Michael Carlson*

In August 2012, a Pima County jury found Michael Carlson guilty of two counts of first-degree murder and two counts of kidnapping for the 2009 murders of Kenneth Alliman and Rebecca Lofton. The jury subsequently sentenced Carlson to death. In his appeal, Carlson challenged the trial court's preclusion of expert witness testimony and raised several other issues, including whether the trial court erred by finding that his prior Texas robbery convictions qualified as serious offenses. Based on excellent briefing and oral argument by AAG Julie Done, the court denied Carlson's claims and affirmed all convictions and sentences.

## **E. Post-Conviction Relief ("PCR") Rulings following Evidentiary Hearings**

### *State v. Wendi Andriano*

Wendi Andriano was sentenced to death in 2004 in Maricopa County for the first-degree premeditated murder of her husband, who was dying of cancer. Andriano poisoned her husband and, when the poison failed to kill him, beat and stabbed him to death. The court granted an evidentiary hearing on two of Andriano's claims—whether trial counsel was ineffective at the penalty phase for failing to investigate and present testimony regarding her difficult childhood and mental illness, and whether one of her attorneys had a conflict of interest that adversely affected her representation. The court heard eight days of testimony at the evidentiary hearing. In November 2014, the court issued its ruling, finding on the failure-to-investigate claim that counsel did not perform deficiently and that Andriano did not suffer prejudice, and finding that no conflict of interest existed because the interests of Andriano, her family, and her attorney were all aligned at trial. Accordingly, the court denied relief. AAG Greg Hazard, Chief Counsel Lacey Gard, and Paralegals Kimberly Carter and Daniel Vidal served as an excellent team in this factually and legally complex matter.

### *State v. Joshua Villalobos*

In 2008, Joshua Villalobos was convicted of first-degree murder and child abuse and sentenced to death for the 2004 beating death of his girlfriend's five-year-old daughter, Ashley Molina. The evidence at trial showed that Villalobos beat Ashley severely while her mother was at work, producing internal injuries that caused her death. Although the State was compelled to agree to resentencing Villalobos after learning that experts retained by both Villalobos and the State received and relied on another inmate's mental-health records to form the opinions they communicated to the jury, the State successfully contested two guilt-phase claims on which the court ordered an evidentiary hearing: ineffective assistance of counsel for failing to retain a pathologist and ineffective assistance of appellate counsel for failing to challenge the trial court's denial of a lesser-included offense instruction. The evidentiary hearing spanned two days of testimony in July and oral argument in December 2014. The court denied relief, finding that testimony from an independent pathologist would not have changed the jury's verdict and that appellate counsel was not ineffective for failing to raise the lesser-included issue. Chief Counsel Lacey Gard, AAG Jason Easterday, and Paralegals Kimberly Carter and Daniel Vidal did an excellent job presenting the State's case, which involved complicated medical testimony.

# Solicitor General's Office (*continued*)

## *State v. Cory Morris*

A Maricopa County jury sentenced Cory Morris to death in July 2005 after he was convicted of five counts of first-degree murder. Between September 2002 - April 2003, Morris killed five women he lured into his camper for sex. Morris kept the bodies in his camper for some time and then put most of them in a nearby alley. The final victim was found inside Morris's camper after a relative noticed the smell and called the police. After his direct appeal was denied, Morris filed a PCR Petition, raising several claims for relief, and the court granted an evidentiary hearing on one issue—whether trial counsel was ineffective for failing to retain and use experts in the penalty phase to disprove the State's theory of necrophilia. The evidentiary hearing took place in March 2015 and covered four days. The court heard testimony from trial counsel in addition to expert witnesses. In April, the court issued a detailed ruling, finding that counsel made a reasonable, strategic decision not to retain additional experts and noting further that, had another expert testified, it would not have undermined the jury's verdict. AAG Julie Done and former AAG Matthew Binford, along with Paralegals Kimberly Carter and Daniel Vidal, did an exceptional job on this case.

## *State v. Albert Carreon*

In May 2003, Albert Carreon was sentenced to death in Maricopa County for the murder of Armando Hernandez and attempted murder of Christina Aragon. In January 2001, Carreon went to the apartment the victims shared and shot both of them several times. Armando died at the scene and Christina recovered from her wounds. At the time of the murder, Christina's two young sons were asleep in the apartment. After Carreon changed his appointed counsel twice and amended his PCR petition multiple times, the court granted an evidentiary hearing with regard to both the guilt and penalty phases of his trial. Specifically, Carreon alleged ineffective assistance of counsel for failing to investigate, interview, and call certain witnesses and failing to effectively cross-examine others. Further, the court heard testimony regarding Carreon's allegation that counsel was inexperienced and was ineffective for failing to discover and present mitigation, including testimony from expert witnesses. After five days of in-court testimony, and at least 10 depositions conducted thereafter, the court issued its ruling in June of this year, finding that Carreon failed in all respects to demonstrate his counsel performed deficiently at the guilt and sentencing phases of his trial. This case is notable for its complexity and the large number of claims at issue, and former Unit Chief Susanne Blomo, AAG Greg Hazard, and Paralegals Kimberly Carter, Daniel Vidal, and Stacy Coleman worked tirelessly to provide the State with excellent representation in this complicated matter.

## *State v. Charles Ellison*

In 2002, a Mohave County jury convicted Charles Ellison of two counts of first-degree murder and burglary. His sentencing was postponed pursuant to *Ring v. Arizona*, and in 2004, a new jury was empaneled and sentenced Ellison to death. In February 1999, Ellison and Richard Finch broke into the home of Joseph and Lillian Boucher, strangled them to death, and robbed them. Following direct appeal proceedings, the PCR court granted an evidentiary hearing on two of Ellison's claims—whether trial counsel were ineffective at sentencing for failing to gather and present mitigation evidence, and whether trial counsel were ineffective for failing to discover, investigate, and present evidence of Partial Fetal Alcohol Syndrome. The evidentiary hearing covered four days of testimony from many witnesses, including experts. In July, the court issued its ruling and found that Ellison's trial counsel did not perform deficiently in the guilt and sentencing phases of his trial. The court further noted that no reasonable jury would find Ellison's proposed mitigating circumstances sufficiently substantial to call for leniency in the face of the six compelling aggravating circumstances the jury found. The court denied Ellison's petition for PCR. This case was a collaborative effort between the AGO and the Mohave County Attorney's Office, and Unit Chief Jon Anderson and Mohave County Attorney Matt Smith did an outstanding job presenting the State's case.

# Solicitor General's Office (*continued*)

## CIVIL APPEALS & ELECTIONS SECTION

### Section Highlights

The Solicitor General's Office Civil Appeals and Elections Section, Attorney General Opinions, Ethics, Independent Advice, the Office's Continuing Legal Education Program, and the Law Library consist of:

- Civil Appeals (two attorneys and a part-time appellate attorney for DES)
- Elections (one attorney; a second attorney position will be filled in FY 2016)
- Opinions (one attorney who oversees the Attorney General Opinion committee)
- Independent Advice (one attorney)
- Senior Litigation Counsel (one attorney who works with a number of different divisions throughout the Attorney General's Office)
- The Continuing Legal Education Program has been overseen in the past by an attorney from the Solicitor General's Office, however that position became vacant in FY 2015
- Library Research Services Director
- The above sections share five support staff and a part-time assistant for the Law Library.

### Major Accomplishments

#### Appellate Brief Review Statistics

Appellate briefing was prolific in FY 2015. SGO attorneys reviewed 381 appellate briefs in FY 2015, spanning work in Arizona state appellate courts (342 briefs), the Ninth Circuit (30 briefs), the United States Supreme Court (five briefs), and other courts (four briefs). SGO attorneys also participated in 32 moot court exercises.

#### A. United States Supreme Court Practice

##### Certiorari Petitions Filed in 2014-15

###### *Kobach v. Elections Assistance Commission (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, alleging that the EAC had a non-discretionary duty to include Arizona's and Kansas's evidence-of-citizenship requirements on the federal voter registration form. The district court for the District of Kansas agreed and granted injunctive relief. The Tenth Circuit reversed, holding that EAC had the authority to deny the requests and did not abuse its discretion in denying the requests. See *EAC v. Kobach*, 772 F.3d 1183 (10th Cir. 2014). Arizona and Kansas filed a joint petition for certiorari in the Supreme Court. Under the Article 1, § 2 and the Seventeenth Amendment of the Constitution, the States determine who is qualified to vote in federal elections. Arizona and Kansas therefore argued that the States had the authority to enforce their voter qualifications by requiring evidence of citizenship and that the EAC lacked authority to refuse to include the evidence of citizenship requirements on the federal form. The Court denied certiorari.

###### *Arizona v. Ashton Company Incorporated Contractors and Engineers*

This case involved settlement agreements between the Arizona Department of Environmental Quality and 22

# Solicitor General's Office (*continued*)

parties that were potentially responsible for cleanup costs for the Broadway-Pantano hazardous waste landfill site in Tucson. The agreements released the settling parties from any further liability for cleanup costs for the site under the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its Arizona counterpart, the Arizona Water Quality Assurance Revolving Fund. When the Department filed an action asking the district court to enter the settlements, several nonsettling potentially responsible parties intervened and opposed the settlements. The district court approved the settlements, finding that they were procedurally and substantively fair, reasonable, and consistent with CERCLA's objectives. A divided panel of the Ninth Circuit reversed, finding that the district court had failed to independently assess the settlement agreements to confirm that they actually were fair, reasonable, and consistent with CERCLA's objectives. See *Arizona v. City of Tucson*, 761 F.3d 1005 (9th Cir. 2014).

The SGO worked closely with Environmental Enforcement Section (EES) throughout the briefing and oral argument in the Ninth Circuit, and in reviewing the petition for rehearing en banc that the Department filed. After the Ninth Circuit denied the petition for rehearing en banc, the SGO worked closely with EES in reviewing the petition for certiorari that the Department filed in the U.S. Supreme Court. The petition argued that the heightened standard for reviewing settlement agreements that the Ninth Circuit had imposed failed to afford any deference to state environmental agencies' expertise, thereby ignoring the special role that CERCLA's plain language accorded the States and conflicting with the established test for approving CERCLA settlements and with First and Third Circuit opinions applying that test. The case was distributed for consideration at the Court's June 25, 2015, conference, but the Court rescheduled consideration to its September 28, 2015, conference.

## *Planned Parenthood of Arizona v. Humble*

The Arizona Attorney General's Office defended the constitutionality of A.R.S. § 36-449.03(E)(6) and related regulations which require abortion clinics to follow an FDA-approved protocol for medication (non-surgical) abortions. On June 3, 2014, the Ninth Circuit published an opinion preliminarily enjoining enforcement of the statute and creating a circuit split in its approach to analyzing the "undue burden" element of the U.S. Supreme Court test. SGO worked with Health and Education Section attorneys and took primary responsibility for drafting and filing a certiorari petition. SGO filed the petition on September 3, 2014. The Supreme Court denied review on December 15, 2014.

## Supreme Court Amicus Briefs

### *Williams-Yulee v. Florida Bar*

In this case SGO drafted a merits stage amicus brief in support of the Florida Bar. At issue was whether Florida's rule of judicial conduct that prohibited candidates for judicial office from personally soliciting campaign funds violates the First Amendment. Arizona as well as a majority of other States have rules similar to the Florida rule challenged in this case. Ten States joined Arizona's brief. We argued that the States have a compelling interest in preserving judicial impartiality and the appearance of judicial impartiality and that a rule that prohibits judicial candidates from personally soliciting campaign funds is narrowly tailored to further that interest. The Supreme Court held that the rule was content-based and therefore subject to strict scrutiny. It upheld the rule because the Florida rule was narrowly tailored to further the compelling interest of preserving the public confidence in the integrity of the judiciary.

### *Mach Mining LLC v. EEOC*

In this case, SGO assisted the Civil Rights Division in preparing a merits stage amicus brief in support of the



# Solicitor General's Office (*continued*)

EEOC. At issue was whether the Seventh Circuit adopted the correct test for determining if the EEOC engaged in conciliation as required by 42 U.S.C. § 2000e-5(b) before filing a lawsuit. We argued in favor of the Seventh Circuit's bright-line test holding that EEOC's conciliation efforts are not subject to judicial review because such review does not promote the elimination of unlawful employment practices through informal processes. Three States joined the amicus brief. Although the Supreme Court held that EEOC's conciliation efforts are subject to judicial review, it rejected Mach Mining's argument that the court review the actual conciliation process and impose standards on the EEOC, holding that "the scope of that review is narrow, reflecting the abundant discretion the law gives the EEOC to decide the kind and extent of discussions appropriate in a given case."

## *EEOC v. Abercrombie & Fitch Stores, Inc.*

In this case, the SGO assisted the Civil Rights Division in preparing a merits-stage amicus brief in support of the EEOC. At issue was whether the Tenth Circuit erroneously interpreted Title VII's religious accommodation requirement. Title VII prohibits a prospective employer from refusing to hire an applicant in order to avoid accommodating a religious practice that it could accommodate without undue hardship. The Tenth Circuit held that the prohibition only applied where an applicant has informed the employer of his need for an accommodation even though the applicant did not know that wearing a headscarf was contrary to the employer's policy. We argued that in cases where an employer has superior knowledge of a potential conflict between an applicant's religious beliefs and its own undisclosed policies that will be used to screen an applicant during hiring, an employer should engage in an interactive dialogue with the applicant about whether a reasonable accommodation is possible. Eight States joined the brief. The Supreme Court held that an employer who acts with the motive of avoiding a religious accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed.

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

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 challenged provisions included prohibiting judicial candidates from personally soliciting campaign contributions, from publicly endorsing, making speeches on behalf of, and actively taking part in candidate campaigns. The panel held that these five provisions of the Code of Judicial Conduct were unconstitutional as applied to non-incumbent, judicial candidates. 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. The Ninth Circuit granted rehearing en banc, allowed supplemental briefing, and held argument before the eleven-judge panel. The court has not yet issued its decision.

## *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 violates the Parties' First and Fourteenth Amendment rights, discriminating against them and in favor of the Democratic and Republican parties because the party preference box on the written registration form limits third parties to a blank for "other." In FY 2015, SGO successfully defended the district court's favorable summary judgment in the Ninth Circuit. SGO argued the case to a panel in January, 2015 and the court published its affirmance in April, 2015. The plaintiffs moved for rehearing en banc, SGO responded, and the court denied rehearing in August, 2015, making minor revisions to the opinion that did not affect the result. See 2015 WL 4664606. Plaintiffs have until November 5, 2015 to file a certiorari petition.

# Solicitor General's Office (*continued*)

## *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. The briefing is complete, but oral argument has not yet been scheduled.

## *Galassini v. Town of Fountain Hills*

An individual challenged the definition of political committee, and district court held that Arizona's statutes governing the definition of political committees and the limitation on any campaign finance registration or disclosure requirements for committees were unconstitutional. The district court entered a declaratory judgment in December 2014, but it did not enter any injunctive relief. After legislative amendments to the definition of political committee, the State moved to dismiss the appeal and vacate the district court judgment. That motion remains pending in the Ninth Circuit.

## *Fisher v. Tucson Unified School District 6*

This federal civil rights case involves a 40-year-old consent decree in a school desegregation case. When the Ninth Circuit overturned the district court's order terminating the case, AGO moved to intervene in the district court proceedings related to the school district's ethnic studies program. The district court denied the motion and AGO appealed. At the request of the Health and Education Section, SGO argued the appeal on November 17, 2014. On December 15, 2014, the Ninth Circuit issued an adverse unpublished decision affirming the district court's denial of the State's intervention motion. The EXO concurred in SGO's recommendation against seeking further review. SGO successfully negotiated a settlement of plaintiffs' attorneys' fees, with a stipulated judgment entered on April 29, 2015.

The Solicitor General's Office defended 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. In *Connolly v. Roche*, the plaintiffs sued the clerks of court in three Arizona counties challenging the clerks' refusal to issue them marriage licenses. In *Majors v. Jeanes*, the plaintiffs sued the Maricopa County clerk of court, the Department of Health Services Director, and the Department of Revenue Director challenging the officials' refusal to issue them marriage licenses or to recognize their same-sex marriages that had been conducted in other states. The plaintiffs in both cases claimed that the officials' actions violated the Fourteenth Amendment to the United States Constitution's Substantive Due Process and Equal Protection Clauses. The district court ruled in the plaintiffs' favor in both cases based on the Ninth Circuit's *Latta v. Otter* opinion, which held that provisions similar to Arizona's were unconstitutional. When the Sixth Circuit Court of Appeals created a split in the federal circuits by upholding similar provisions in *DeBoer v. Snyder*, the SGO appealed both the Connolly and Majors decisions to the Ninth Circuit and asked the court to stay its consideration of the cases pending the U.S. Supreme Court's upcoming decision on the issues. After the Supreme Court issued its *Obergefell v. Hodges* decision holding that provisions similar to Arizona's were unconstitutional, the SGO asked the Ninth Circuit to dismiss the appeals in both cases.

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.

# Solicitor General's Office (*continued*)

## C. Arizona Appellate Court Practice <sup>1</sup>

### *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, 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.

### *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. 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 filed a petition for review, but the Arizona Supreme Court denied review in 2015.

### *Roberto F. v. Dep't of Child Safety*

In this case, the SGO worked with the Protective Services Section in preparing a petition to the Arizona Supreme Court for review of the court of appeals' decision in *Roberto F. v. Dep't of Child Safety*, 235 Ariz. 388 (App. 2014) (Roberto II). There, the court of appeals held that the juvenile court lacked jurisdiction to enter an adoption order pending a parent's appeal from a termination order, citing Ariz. R.P. Juv. Ct. 103(F) (providing that during the pendency of an appeal, the juvenile court may proceed on issues remaining before it or newly presented to it if the court's ruling on the issue would not prevent the appellate court from granting the relief requested on appeal). In its petition, the State argued that Rule 103(F) applied only to those issues in the appealed case (here, the termination action) and not separate, albeit related, cases (such as the adoption action). It argued that the court of appeals' interpretation of the rule would both prevent Arizona from complying with the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 670-679 (enacting procedures to expedite adoptions), and prohibit the juvenile court from entering a termination order pending a parent's appeal from any number of appealable orders in a dependency case. The supreme court agreed with the State that Rule 103(F) did not restrict the juvenile court's authority to decide issues in separate, albeit related, cases and vacated the opinion in Roberto II.

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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

# Solicitor General's Office (*continued*)

## *Department of Child Safety v. Beene*

The SGO worked with the Protective Services Section to file a special action challenging the juvenile court's denial of its motion for a protective order seeking to preclude the parents from calling their children as witnesses at the severance trial and cross-examining them about their prior statements of abuse. The State argued that the respondent judge had erroneously evaluated only two of the four factors set forth in *Mathews v. Eldridge*. The court failed to consider the children's interests or that the parents could test the reliability of the children's hearsay statements in other ways, including by cross-examining the authors of the documents in which the statements appeared. The court of appeals agreed with the State, holding that the juvenile court is required to consider the children's best interests when determining whether the parents have a due process right to call, confront, and cross-examine their children about their prior statements. It further held that if warranted by the specific facts and circumstances of the case, the weighing and balancing of the factors set forth in *Mathews v. Eldridge* may mean the parents do not have a due process right to call their children as witnesses to confront and cross-examine them.

## *Melissa W. v. Dep't of Child Safety*

The SGO worked the Protective Services Section to brief the important issues in this case. The mother, Melissa W., appealed the juvenile court's order terminating her parental rights, arguing that it had improperly drawn an adverse inference against her for failing to testify. She argued that the juvenile court had misapplied the factors in *Gordon v. Liguori*, 182, Ariz. 232 (App. 1995) (holding that the trial court may draw an adverse inference from the failure to present testimony after considering (1) whether the witness was under the control of the party who failed to call him or her, (2) whether the party failed to call a witness whose testimony it would naturally be expected to produce if it were favorable, and (3) whether the existence of a disputed fact is uniquely within that witness's knowledge). The court of appeals questioned whether the Liguori test applied and held that when a party fails to testify, a negative inference is appropriate and analysis of the Liguori factors is not necessary. It nevertheless agreed with DCS that even under the Liguori test, the juvenile court properly drew an adverse inference here: (1) Mother was not, as a practical matter, equally available to both parties because she was in the best position to anticipate the content of her own testimony; (2) a parent would testify at a severance hearing if the testimony would be helpful to the parent's case; and (3) her perspective about the topics material to her ability to parent were uniquely within her knowledge.

## *Arrett v. Bower*

The SGO represented the Secretary of State's Office in this case by intervening in the court of appeals. Our Office successfully argued for the application of strict compliance and the significance of the petition serial requirement for referendum petitions. The court of appeals affirmed the lower court and cited SGO's arguments in support of its decision. The SGO also filed a brief opposing a petition for review and the Arizona Supreme Court denied review in June 2015.

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. In fiscal year 2015, the Solicitor General's Office reviewed 381 state and federal court briefs, and coordinated and participated in 32 moot court sessions in which AGO attorneys presented oral argument.

# Solicitor General's Office (*continued*)

## D. Ensuring Fair Elections and an Informed Public

In fiscal year 2015, 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.

An attorney from the Solicitor General's Office participated as an instructor 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 attorney also provided instruction of "Federal Election Law". Additionally, an SGO attorney served on the election office education, training, and certification advisory committee that advises on the curriculum for the election officer training program.

An SGO attorney 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. An SGO attorney 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.

## E. Campaign Finance Enforcement

This fiscal year, the Solicitor General's Office received 33 campaign finance referrals relating to failure to file January 31, 2014 campaign finance reports, 19 campaign finance referrals relating to failure to file June 30, 2014 campaign finance reports, 30 campaign finance referrals relating to failure to file post-primary campaign finance reports, 16 campaign finance referrals relating to failure to file pre-primary campaign finance reports. SGO attorneys have conducted extensive briefing in *Galassini v. State* regarding enforcement of these campaign finance referrals and are currently reviewing enforcement options.

## F. 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 38 lobbyists for failure to file their 2014 third quarter report, 51 for failure to file the 2014 fourth quarter report, and 44 for failure to file the 2015 first quarter report. Of those, this office worked with the Secretary's Office to bring 115 lobbyists into compliance. The Secretary also referred 77 public bodies and principals for failure to file annual reports; 72 have currently been brought into compliance.

## G. Arizona's Clean Elections Act

Attorneys from the Solicitor General's Office continued to advise the Citizens Clean Elections Commission. This included a variety of legal questions, public records requests, and enforcement matters. Our office also participated as legal advisor in a number of public hearings with the Commission.



# Solicitor General's Office (*continued*)

## H. 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 she 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 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 Court asked for briefing on the merits and affirmed the constitutionality of the AIRC's redistricting authority.

### *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. 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. The Supreme Court has ordered the parties to brief the merits. The Secretary of State filed a brief on the merits arguing that the lines are unconstitutional.

### *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. The court lifted the stay of this litigation in light of the Supreme Court's resolution of *Arizona State Legislature v. AIRC*.

## I. Nominating Petitions Litigation

The Secretary of State was named as a party in 21 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.

## J. Other Election Matters

The SGO also engaged in a number of other activities intended to maintain the integrity of state elections. The SGO conducted several investigations into the misuse of public resources and provided ongoing advice on matters related to voter registration and election administration to the Secretary of State's Office.

# Solicitor General's Office (*continued*)

## ATTORNEY GENERAL OPINIONS

The Solicitor General's Office coordinates the drafting and publication of Attorney General opinions. In fiscal year 2015, the Attorney General received 26 opinion requests and issued 10 formal opinions. Those opinions addressed topics including the regulation of fire districts, whether certain statutes apply to electronic cigarettes, whether an employee "participates" in the Arizona Public Safety Personnel Retirement System ("PSPRS") when an employee who returns to work in a PSPRS designated position continues to receive the employee's pension benefit and the Department makes a contribution to PSPRS on behalf of the employee, procedures for disincorporating a municipality as set forth in A.R.S. §§ 9-211 through 9-226, inmate's parole eligibility, instant wagering, antique firearms, zoning rights of charter school leasing facilities, Rio Nuevo multipurpose facilities district, and small school weight for charter schools.

## LIBRARY & RESEARCH SERVICES

The Solicitor General's Office assumed management responsibility for the AGO law library in fiscal year 2009. Since that time the library has tracked library usage, streamlined procedures for ordering books, increased legal research training opportunities, drafted successful grant proposals for the Office, reduced the budget monies spent on print materials, created a virtual law library on the AGO's Intranet, and placed an increased emphasis on electronic research tools.

While library interactions and usage by AGO researchers remain constant, budget monies spent on print materials decreased. Moreover, electronic legal research databases and tools expanded while the cost of providing these resources is below 2011 and 2012 expenditure levels.

## ETHICS

In the spring of 2015, the AGO dissolved the position of Special Counsel for Ethics and Training. Prior to that time, Special Counsel served in the primary ethics role and since that time the Assistant Solicitor General for AG Opinions and Ethics has done so. A general summary of the services the two individuals provided follows:

- Provided daily office-wide assistance and advice on a broad range of ethical issues, including: attorney ethics; judicial ethics; public employee ethics; secondary employment and volunteer activity; and conflict of interest and screening
- Provided ethics advice and heightened conflicts review services unique to the transition of a new administration and related hiring
- 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
- Coordinated revision of the Arizona Agency Handbook
- Served as a presenter for various internal and regional training programs

# Solicitor General's Office (*continued*)

## 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 2015, we offered 28 continuing legal education programs worth a total of 56 CLE hours, 9.5 hours of which qualified for ethics credit. The programs covered a wide range of legal topics. Approximately 1,478 people attended these programs, earning a total of 3,396 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 \$132,444.00. For additional information and a break down by program, see the attached spreadsheet.

## NAGTRI COORDINATION & 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.
- Ms. Foster Coordinated nominations for Arizona's AAGs to attend NAGTRI training programs which resulted in 23 AAGs receiving scholarship funding to attend national NAGTRI training programs in 2014-15.
- Ms. Foster Coordinated two NAGTRI training programs provided in-house, at no cost to the AGO. First, full day program regarding E-Discovery, which 52 AGO attorneys attended providing 338 total CLE hours, valued at \$13,182.00 to the office. Second, a full day program regarding Representation of State Agencies, which 85 AGO attorneys attended providing 523 total CLE hours, valued at \$20,397 to the office.
- Ms. Foster coordinated an additional six NAGTRI training programs. Approximately 85 AGO attorneys and other personnel attended these in-house NAGTRI programs, which provided a total of 523 hours of CLE credit to the attendees. The approximate value to the office of these in-house NAGTRI programs is \$20,397.00.
- Ms. Foster served as faculty presenter for the Representation of State Agencies NAGTRI mobile training program in Arizona.

# Solicitor General's Office (*continued*)

## 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 2015, the team consisted of 20 members.

In fiscal year 2015, 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 29 public bodies. Presently, there are investigations open against 56 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 15 to 20 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.

# Solicitor General's Office (continued)

CLE PRESENTATIONS 2014-2015 CLE YEAR										
No.	Date	Title Of Presentation	Comment	Ethics	CLE Hrs	Attendees (Phoenix)	Attendees (Tucson)	Total Attendees	Total CLE Hrs	Value
1	08/12/14	ESI 101	Dennis Martin	0.5	2	58	0	58	116	\$4,524.00
2	09/09/14	HIPAA: Understanding the Basics and How it Applies to Your Practice Area	Therese Martin Kathryn Greene	0	1.5	58	5	63	94.5	\$3,685.50
3	10/10/14	Civil Procedure Game Show Part Two	Larry Cohen	0	3	29	4	33	99	\$3,861.00
4	10/22/14	Human Trafficking 101: Awareness, Legislation and Responses	Todd Latiolais	0	2	41	3	44	88	\$3,432.00
5	11/07/14	So What Do We Really Know About Brain Injury	Larry Cohen	0	1	30	2	32	32	\$1,248.00
6	11/13/14	NAGTRI: E Discovery	Brendan Ruane Greg Metcalfe Hedda Litwin	1	6.5	48	4	52	338	\$13,182.00
7	11/14/14	A Legal Writers Checklist: Twenty Tips to Improve Your Motions and Briefs	Professor Salmon		2	50	6	56	112	\$4,368.00
8	12/05/14	Larry Cohen's Last Ethics Program	Larry Cohen	3		100	8	108	324	\$12,636.00
9	12/11/14	The Affordable Care Act: Through the Employee/Employer Looking Glass	Denise Blommel	0	2	39	5	44	88	\$3,432.00
10	01/13/15	NAGTRI: Representation of State Agencies	Al Lama David Chaisson Mary Jo Foster	2	6.5	76	2	78	507	\$19,773.00
11	01/13/15	Agency Representation 101			1	1	0	1	1	\$39.00
12	01/13/15	Social Media "Whoops I Tweeted Again"				0	0	0	0	-
13	01/13/15	Ethical Consideration for a Public Law Practice			1	1	0	1	1	\$39.00
14	01/13/15	The Administrative Process			2	1	0	1	2	\$78.00
15	01/13/15	Public Records and Open Meetings "Let the Sunshine In"			3	4	0	4	12	\$468.00
16	01/28/15	Persuasion 101: Legal Writing	David Weinzwieg		2	74	2	76	152	\$5,928.00
17	02/24/15	Practical Lawyering 101	Bill Richards	1	3	66	8	74	222	\$8,658.00
18	03/10/15	Administrative Regulation and Pitfalls	Prof. Epstein		1	124	6	130	130	\$5,070.00
19	03/17/15	Impeachment: The Art of Destroying a Witness	Don Stevens	1	3	75	13	88	264	\$10,296.00
20	03/19/15	The Bermuda Triangle: The Relationship Between Worker Compensation, the ADA and the FMLA	Denise Blommel		1.5	51	4	55	82.5	\$3,217.50
21	03/26/15	Persuading and Dissuading: Effective Oral Advocacy	Rob Ellman		1	66	14	80	80	\$3,120.00
22	05/08/15	Effective Public Speaking for Lawyers	Suzanne Rabe		1	55	10	65	65	\$2,535.00
23	05/14/15	Sharpening the Axe- The Keys to Careful Witness Preparation	Bill Richards	0.5	2	49	3	52	104	\$4,056.00
24	05/28/15	Who Draws the Lines? Will the Supreme Court Strike Down Independent Redistricting Commissions	Mary O'Grady Peter Gentala		1	31	1	32	32	\$1,248.00
25	06/12/15	AZ Appellate Year in Review	Dave Cole		2	41	5	46	92	\$3,588.00
26	06/16/15	Mediation: The "Superior Opportunity"	Bill Richards	0.5	2	44	2	46	92	\$3,588.00
27	06/25/15	Persuading and Dissuading Part II: Effective Oral Advocacy in Motion Practice and Appeals	Rob Ellman		1	46	6	52	52	\$2,028.00
28	06/30/15	U.S. Supreme Court Review: Highlights of the 2014-15 Term	Professor Bender		2	97	10	107	214	\$8,346.00
<b>Totals:</b>				9.5	56	1355	123	1478	3396	<b>\$132,444.00</b>



# Criminal Division



Division Chief Donald E. Conrad

## MISSION:

To protect the citizens of Arizona by investigating and prosecuting criminal cases within the State. To promote and facilitate safety, justice, healing and restitution for 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 investigative support to the Attorney General's Office and to law enforcement agencies throughout the State.

### Division Summary

The Criminal Division is divided into eight Sections: Alliance Section/TRAC; Drug & Racketeering Enforcement Section; Financial Remedies Section; Fraud & Special Prosecution's Section; Health Care Fraud & Abuse Section; Office of Victim Services; Special Investigations Section and Tucson Criminal Section.

### ALLIANCE SECTION



The Alliance Section was created as a result of a settlement agreement that the Arizona Attorney General reached with Western Union Financial Services, Inc. in 2010. The Alliance Section provides support to the Southwest Border Anti-Money Laundering Alliance (Alliance), the Transaction Record Analysis Center (TRAC) and the Arizona Forfeiture Association (AFA). The Alli-

ance Executive Board was created as a consortium of the four Attorney General's Offices of states that border Mexico. The Board also included 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 AZDFI. Law enforcement agencies in the southwest Mexican border area, including Mexico, were eligible for funding. Details about the Alliance may be found at [www.swballiance.org](http://www.swballiance.org) or at [www.azg.gov/swbamla](http://www.azg.gov/swbamla).

In the past year, the Alliance Executive Board completed its mission of awarding the grant funds. The Alliance, through, the Authorized Representative State, Arizona will continue to fund its money laundering initiatives in the four border states until their grant funds are expended or until 2019, whichever comes first. These Alliance grant initiatives involve state, federal and local officers working in multi-disciplinary teams to create a chain

of inter-related task forces concentrating on money laundering enforcement at the highest levels. These were in addition to the Alliance funded bulk cash interdiction operations that intercepted drug money on the highways in Nogales, Kingman and Florence, Arizona and in Silver City, New Mexico.

The Alliance continued its Law Enforcement Unity Program in 2015 providing training and support to unify all Alliance law enforcement initiatives along the Southwest border. In addition, the Alliance unites law enforcement focusing on money laundering efforts through training and annual conferences held throughout the Southwest and in Mexico. In FY15, 1,408 participants were trained in 28 training events.

### TRAC



The distribution of money transmitter transaction data to law enforcement is now administered by the Transaction Record Analysis Center (TRAC). TRAC was

# Criminal Division (continued)

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 within the southwest border data area for transactions involving amounts of \$500 or more. The Southwest border area includes all of Arizona, California, New Mexico, Texas and the country of 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 among the participating agencies. TRAC provides 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 international money laundering.

TRAC continues to focus on analysis of human trafficking related money transfer payments in order to more rapidly interdict domestic senders of human trafficking related money transfers and further identify international payees. Financial analysis of payments made by

consumers of human trafficking, including international sex trafficking of women and children, in conjunction with traditional law enforcement techniques and closer collaboration with money services business industry professionals will result in enhanced interdiction techniques.

## DRUG & RACKETEERING ENFORCEMENT SECTION

DRG combats drug trafficking and money laundering organizations operating within Arizona. Attorneys in this Section also provide legal advice and training statewide on issues involving search and seizure, Arizona's drug laws, legal and procedural requirements of electronic interception and courtroom testimony.

### Overview of Accomplishments

In FY15, DRG had 616 open cases and resolved 303 of them. DRG cumulatively charged 383 defendants with felony offenses. Total drug seizures included 1,489.27 pounds of methamphetamine, 157.49 pounds of heroin, 191.46 pounds of cocaine, seven pounds of raw opium, 5,195.56 pounds of marijuana along with \$7,965,991 cash. DRG also obtained \$973,850 in court ordered fines and \$21,524 in restitution.

### Major Cases

#### Investigation #446

This investigation began in July 2013 with agents from DEA and Tempe PD, targeting a large drug trafficking organization (DTOs) operating out of Culiacan, Sinaloa, Mexico. Officers served 13 search warrants and conducted numerous traffic stops. This has resulted in the seizure of approximately 981 pounds of methamphetamine with a wholesale value of \$3,924,000, 55 pounds of cocaine with a wholesale value of \$625,000, 83 pounds of heroin with a wholesale value of \$940,000 and the filing of 15 separate indictments involving a total of 31 defendants.



# Criminal Division (*continued*)

During the past year, several of the defendants from this investigation have entered plea agreements and received sizable sentences. Such as the following defendants:

## *State v. Isidro Ramos, et.al.*

Investigators identified Ramos as an illegal drug distributor in Phoenix. Investigators discovered that Ramos would be picking up a quantity of methamphetamine supplied by Nava-Nunez. After surveillance of Ramos, a marked patrol car attempted to conduct a traffic stop of the vehicle Ramos was driving. Ramos fled from police and then parked his car and ran, but was apprehended shortly thereafter. When investigators searched the vehicle he was driving, they found a suitcase containing 21 pounds of methamphetamine. Ramos pled guilty to Transportation for Sale of a Dangerous Drug, Methamphetamine and was sentenced in August 2014 to 7.5 years in prison. Nava-Nunez pled guilty to Sale of Dangerous Drugs, Methamphetamine and was sentenced in October 2014 to ten years in prison.

## *State v. Esperanza Felix-Arredondo*

Investigators identified Felix-Arredondo as an illegal drug distributor in Phoenix. Investigators learned through that Felix-Arredondo acted as a dispatcher. She

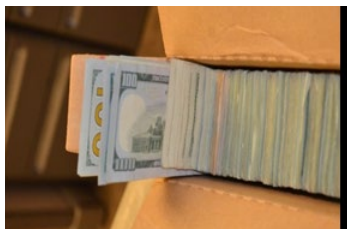
would take customer's calls for quantities of illegal drugs and dispatch co-conspirator Hugo Rivera-Valdez to meet with customers to deliver quantities of illegal drugs. During a search warrant of a stash house utilized by Felix-Arredondo, investigators seized 1.5 pounds of methamphetamine, \$20,000 in drug proceeds and indicia of sales including drug ledgers, baggies, scales, four handguns and a rifle. Felix-Arredondo pled guilty to Possession for Sale of Dangerous Drugs, Methamphetamine and was sentenced in December 2014 to 6.5 years in prison.

## *State v. Manuel Ortiz*

Ortiz was identified as a leader of a cocaine trafficking organization and he was trafficking cocaine on a daily basis for over three months. In October 2014, investigators served search warrants at two apartments utilized by the defendant as stash houses. Prior to his arrest, the defendant fled from police and barricaded himself inside one of the apartments. When entry was made, he was attempting to flush two kilograms of cocaine down the sink. Investigators also seized from the apartment crack cocaine, a handgun, a press utilized to compress kilograms, scales and baggies. Ortiz pled guilty to Conspiracy to Sell or Transport Narcotic Drugs, Cocaine and was sentenced to seven years in prison.

## **Investigation #460**

This investigation was initiated in May 2014 by the HIDTA MCDUST Task Force and the Tempe PD. The investigation targeted Mexico-based sources of supply of methamphetamine, cocaine and heroin along with transportation coordinators who smuggled these drugs from Mexico into the United States to distributors operating in Phoenix. Investigators seized approximately 183 pounds of methamphetamine with a wholesale value of \$732,000, 57 pounds of cocaine with a wholesale value of \$650,000 and 34 pounds of heroin with a wholesale value of \$375,000. In addition, investigators have seized \$734,056 in illegal drug proceeds and 39 vehicles used by drug traffickers in the course of their crimes. From July 2014 through June 2015, DRG secured indictments against 64 individuals arising out of this investigation.





# Criminal Division (continued)

Two of the significant defendants prosecuted as a result of this investigation resulted in the following sentences:

## *State v. Lilia Romero Lopez*

In July 2014, investigators learned that Lopez was responsible for packaging illegal drugs and/or drug proceeds and delivering the drugs and proceeds to customers. Further investigation revealed that a large quantity of cash was collected by Lopez and that she would be coordinating the transportation of that cash to Mexico. Surveillance was established at her home and observed a co-defendant getting into a vehicle in the driveway with a large duffle bag in the back seat. As the co-defendant drove away from Lopez' home, he was stopped and police located \$522,196 in bulk US currency in the duffle bag. Lopez pled guilty to Attempted Possession for Sale of Narcotic Drugs, Cocaine and Money Laundering and was sentenced to a term of five years in prison, followed by a three year term of supervised probation.



## *State v. Servando Ponce Perez*

In October 2014, investigators learned of a heroin trafficker named Perez. Further investigation revealed that Servando was going to be shipping a large quantity of heroin to Washing-

ton State. Surveillance was established at his residence and investigators stopped a car driven by his girlfriend as she left. Inside the vehicle, hidden in a secret compartment, approximately ten pounds of black tar heroin was found with a wholesale value of \$110,000. Police continued to investigate Perez after this seizure and in February 2015, he was arrested after acquiring another two pounds of heroin. Perez pled guilty to Attempted Possession for Sale of Narcotic Drugs, Heroin, and Misconduct Involving Weapons with a stipulated sentence of 4.5 years in prison, followed by a term of supervised probation.

## **Investigation #463**

This investigation began in 2014 with agents from DEA and Phoenix PD. The investigation targeted a group which was smuggling methamphetamine and cocaine through the Nogales Port of Entry. This investigation led to the indictment of 16 defendants associated with this drug ring and the seizure of approximately 93 pounds of methamphetamine, including eight pounds of cocaine. Of those indicted, the two most sophisticated drug couriers were Celia Aguilar and Maria Mejia-Murrieta.

## *State v. Cecelia Aguilar*

Aguilar aka Nana traveled numerous times with her adult daughter and delivered methamphetamine in a hidden compartment located

between the driver and passenger seat which was designed to hold between 16 and 18 pounds of cocaine or methamphetamine. Aguilar pled guilty to Conspiracy to Transport Dangerous Drugs for Sale and received a reduced prison sentence because of her age and severe health conditions.



## *State v. Maria Mejia-Murrieta:*

Mejia-Murrieta traveled with her toddler and teenage son when she crossed the border with methamphetamine to make it appear that it was a family trip. She directed her teenage son to deliver the 22 pounds of methamphetamine to other drug traffickers. Mejia-Murrieta pled guilty to Conspiracy to Transport Dangerous Drugs for Sale. She is scheduled to be sentenced on December 1, 2015 to prison for a term of five to ten years.

## **Investigation #467**

This investigation was conducted by DEA and Mesa PD, targeting a group of heroin and methamphetamine traffickers operating in Phoenix. Police seized in excess of 40 pounds of methamphetamine, one pound of heroin, and approximately \$50,000 in drug proceeds. Eleven individuals were indicted as a result of the investigation. Prosecution is ongoing.

# Criminal Division *(continued)*

## *State v. Lorena Lopez de la Paz*

In October 2014, police conducted a traffic stop which led to the seizure of more than two pounds of heroin and 51 receipts from a money wire service. The money wire receipts were provided to the Arizona Financial Crimes Task Force investigators who determined that all the receipts were sent from Lorayne's Beauty Salon in west Phoenix. The records revealed that more than \$68,000 was sent to payees in Mexico. Based upon this information, officers conducted surveillance operations at Lorayne's Beauty Salon on multiple dates and then analyzed the financial records which occurred during the surveillance operations. The investigation revealed that there was very little foot traffic into the salon, but there were numerous money wires, which all purported to be from different individuals. In June 2015, investigators served a search warrant at Lorayne's Beauty Salon where Lopez de la Paz admitted that she knew she was laundering money. Lopez de la Paz was indicted for Conspiracy, Illegally Conducting an Enterprise and four counts of Money Laundering. Prosecution is ongoing.



## *State v. Herman Pelayo*

In November 2013, officers arrested Pelayo for smoking meth

inside his car. After Pelayo was arrested, police searched his car and found a meth lab in his trunk. The investigation revealed that Pelayo would spend the night in local motels, which was where he cooked his meth. Inside of the trunk, officers found chemicals and equipment necessary to produce methamphetamine, including: glassware, red phosphorus, pseudoephedrine, iodine, Coleman fuel and items for a HCL generator. Defendant Pelayo pled guilty to Manufacturing Dangerous Drugs and was sentenced in December 2014 to eight years in prison.



## *State v. Nathaniel Fripp*

In March 2015, a DPS officer pulled over a commercial vehicle for a traffic violation. The officer became suspicious based on his interactions with Fripp and his log book entries. The suspect consented to search where twelve cardboard boxes filled with marijuana were found. The total weight of the marijuana was approximately 1,336 pounds with an additional 280 pounds of high grade marijuana for a total street value of \$1,896,000. Prosecution is ongoing.



## *State v. Western Union*

In January 2014, the AGO entered into an amended settlement agreement with Western Union to 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 made available to the AGO. This will assist law enforcement officers in locating and prosecuting those involved in money laundering resulting from illicit drug trafficking. 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 more than 100 recommendations made by outside consultants to refine its anti-money laundering program. As of October 2015, Western Union has submitted all of the initial recommendations to the independent and court appointed Monitor for testing.

# Criminal Division (*continued*)

## FINANCIAL REMEDIES SECTION

FRS prosecutes racketeering lawsuits that give rise to the remedy of forfeiture in matters related to organized crime. FRS cases involve a wide range of racketeering offenses including the sale and transportation of dangerous, narcotic and other illegal and misbranded drugs, money laundering, theft, securities and investment fraud, illegal gambling and public benefits fraud. Working with federal, state and local law enforcement agencies and task forces throughout Arizona, FRS obtains judgments against persons engaged in racketeering, against the real and personal property used to commit racketeering or purchased or acquired with racketeering proceeds, against and the proceeds gained from racketeering. Asset forfeiture allows FRS to deprive criminal organizations and enterprises of the profits that keep them in business. It also alleviates the negative impact that racketeering has on legitimate Arizona commerce.

Arizona is a drug importation and trans-shipment State in which drug smuggling and transportation activities are often dominated by large drug trafficking organizations and networks. These drug organizations smuggle large amounts of drugs into Arizona and smuggle large amounts of currency out of Arizona and out of our economy. Nine out of fifteen Arizona counties, comprising approximately 90% of Arizona's population, are designated High Intensity Drug Trafficking Areas (HIDTA) by the Office of National Drug Control Policy. Drug distribution, money laundering and drug use in Arizona pose significant public safety threats due to the nexus between drug trafficking, drug sales, drug use, and violent crime. While systemic drug trafficking and drug sale violence is often associated with turf battles and struggles for control among distributors, drug demand and drug use also catalyze that violence and form the basis for the crimes associated with the need to secure funds to purchase drugs in the first instance.

The violent crimes associated with the importation and distributions of illegal drugs in Arizona constitute an acute threat to public safety. Methamphetamine has been reported to be the greatest drug threat to the Arizona HIDTA region, with law enforcement officers also reporting an increase in heroin smuggling and seizures. These and other illegal drugs are regarded as substantial contributing factors to violent crime in the Arizona. (Source: U.S. DOJ, Arizona HIDTA, Drug Market Analysis). The strategy of proactive policing and parallel criminal and forfeiture prosecution is essential to eradicating drugs from Arizona and dismantling the drug trafficking organizations that smuggle drugs into this State. FRS is an integral part of this Arizona law enforcement chain, with specialized personnel and processes for combating these issues. Lawful forfeitures made with respect to these crimes has resulted in seizures of firearms and other weapons, real estate, vehicles, currency, and other assets that, when forfeited, have the net effect of quickly putting these criminal elements out of business. While FRS (AGO) initiatives continue to target the dismantling of the financial structures of drug trafficking organizations and suppliers via asset forfeiture, Special Agents indicate that calls for assistance from the public and other law enforcement agencies in this area remain at a high level.

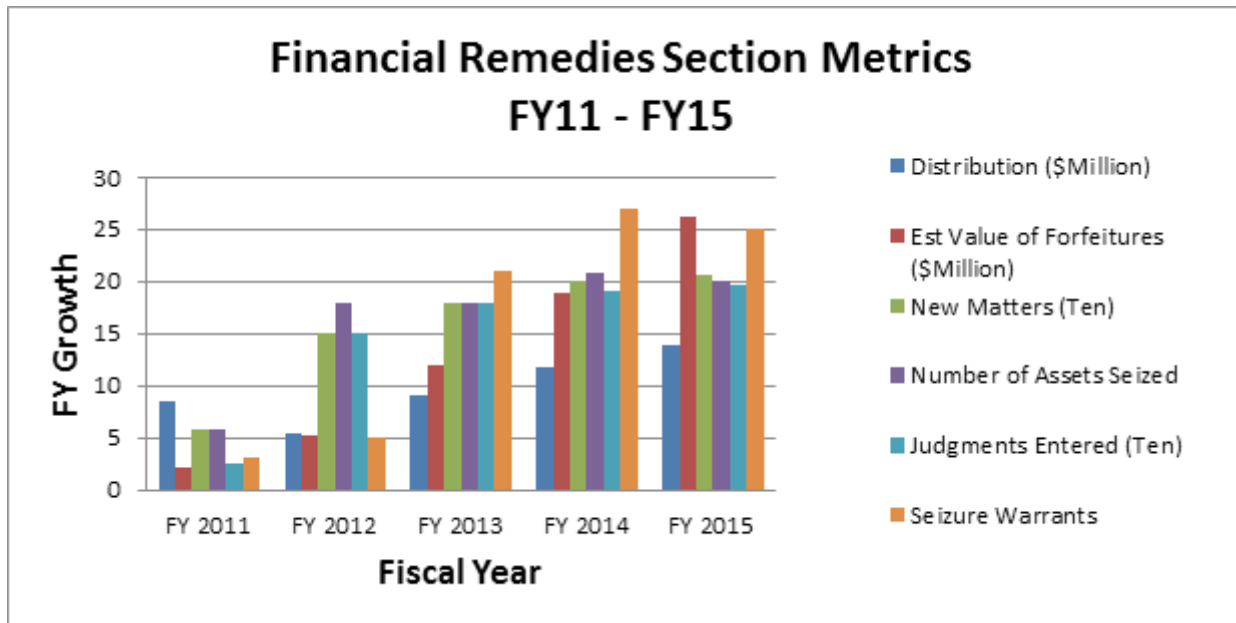
### Overview of Accomplishments

During FY15, FRS disrupted 101 criminal enterprises, in part, by procuring 25 seizure warrants and seizing assets worth approximately \$16 million dollars. FRS opened 207 cases and filed forfeiture actions against 2,947 defendants (individuals and seized items of real and personal property). FRS successfully concluded 298 matters and obtained final judgments forfeiting assets with an estimated value of \$26 million dollars. As a result, FRS was able to distribute approximately \$13.8 million dollars to crime victims, law enforcement agencies and state agencies. Apart from complex civil litigation at the trial and appellate court level, FRS attorneys also conducted



# Criminal Division (continued)

26 forfeiture and money laundering trainings for approximately 732 law enforcement agents and State personnel regarding forfeiture law, procedures, trends, best practices and limitations.



## Major Cases

### *Jamaican Lottery Fraud – Seizure/Damming Warrant*

In FY15, FRS worked closely with Arizona Financial Crimes Task Force officers to combat a Jamaican lottery fraud scheme in which Arizona citizens received unsolicited telephone calls from purported lottery officials stating that the Arizonans: (a) had won millions of dollars in a foreign lottery; and (b) needed to pay a fee in advance to claim their prize. The scammers often targeted vulnerable or elderly adults. The scammers demanded the victims send the money as requested, but never receive their promised lottery winnings. In a unique application of Arizona forfeiture law, and based on an extensive investigation including the review of large amounts of wire transmitter data, FRS obtained a seizure (damming) warrant that ordered the temporary detention of certain wire transfers going from Arizona to Jamaica. The wire transmitters directed the senders of the blocked funds to contact officers via a toll-free number. Officers then interviewed the senders, explained the scam and arranged for the return of the money to the potential victims. During the ten-day operation, law enforcement returned more than \$12,000 to 13 potential victims and FRS anticipates procuring a judgment forfeiting approximately \$1,290 seized from two suspected facilitators/scammers.

### *In the Matter of 7002 E. 42nd Street, Tucson, Arizona*

The Tucson FRS Office helped to combat and dismantle a criminal street gang based on a joint investigation involving the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Tucson PD and DPS Gang Immigration Intelligence Team Enforcement Mission (Tucson GIITEM). The investigation demonstrated that the gang was involved in drug trafficking, money laundering, possessing and trafficking in firearms and committing violent crimes. Between 2006 and 2014, police recovered over 80 firearms tied to the gang, and they also linked multiple murders to the gang. In August 2014, the task force executed Search Warrants on multiple locations

# Criminal Division *(continued)*

known to be occupied and used by gang members. Agents discovered substantial evidence of drug trafficking including mail shipment of bulk marijuana, prescription drugs including methadone, heroin, cocaine, multiple scales, packaging materials, baggies, narcotics residue and ledgers, multiple illegal and/or unregistered weapons, body armor and bulk currency. An analysis of phone and bank records revealed multiple funnel accounts used to move \$450,000 from buyers on the East Coast to accounts held by the gang members. The forfeiture case included property taken from 25 gang members and associates, 18 of whom were indicted in a related criminal case and many have been convicted of criminal enterprise, drug trafficking and other related crimes. All seized property not released to lienholders or by discretion of the State was forfeited through judgments entered in February 2015.



## *Operation Dr. Greenthumb*

FRS assisted a multi-agency DTO investigation of an illicit marijuana distribution network spearheaded by the Maricopa County Sheriff's Office (MCSO) HIDTA Task Force. This investigation concluded in May 2015, with the service and execution of search and seizure warrants at multiple locations. Investigators discovered the largest indoor marijuana grow in Maricopa County history, in a warehouse south of downtown Phoenix. Marijuana grow sites were also discovered inside residences of the suspected marijuana traffickers. Civil forfeiture proceedings are ongoing.

## *In the Matter of \$99,990*

An ongoing investigation revealed that a money courier would be transporting large quantities of illegal drug proceeds to Mexico on behalf of a DTO. Surveillance identified the residence utilized to store the illegal drug proceeds. A traffic stop and subsequent search revealed approximately \$99,990 in illegal drug proceeds wrapped and bundled inside gift bags located on the passenger floor board. A search warrant was obtained for the residence and during the search investigators located approximately three pounds of methamphetamine, two firearms, a drug ledger and approximately \$468,480 in illegal drug proceeds wrapped and bundled in the master bedroom of the residence. Martin "Junior" Perez, Jr. and Edgar Ivan Perez-Esparza have been indicted. Civil forfeiture proceedings are ongoing.



# Criminal Division (*continued*)

## *In the Matter of \$556,000*

In late 2014, the Marana PD, as part of a multi-agency task force investigation revealed a large cash distribution by a DTO. Officers were able to interdict a vehicle on the Interstate carrying \$556,000 in US currency intended as the payment for drugs. The driver disclaimed any ownership of the cash and was served with a Notice of Seizure for Forfeiture and Pending Forfeiture. The cash was forfeited while no criminal prosecution of DTO members was possible. This case is an example of the law enforcement purposes of racketeering remedies and civil forfeiture proceedings and the efficacy of their use to remove the financial capital of criminal enterprises and rededicate it to public safety even when no criminal prosecution or conviction is possible.

## *State v. Mircea Buzila, et.al.*

On referral by Adult Protective Services, FRS obtained a warrant for seizure of the personal and business accounts and certain assets of an in-home elder care service provider that wrote forged checks totaling more than \$50,000 out of an account owned by a 72 year old victim who subsequently died. Ultimately, FRS obtained forfeiture of assets totaling almost \$39,000 for return to the elderly victim's heirs.

## *State v. Ketan Panchal, et.al.*

Together with the Financial Crimes Unit of the Mesa PD, FRS asked four different financial institutions to voluntarily put holds on a total of six depository accounts. A bookkeeper had redirected more than \$360,000 in insurance proceeds intended for his employer, an urgent care facility, to these accounts. Within hours after the accounts were frozen, the bookkeeper, who had left the country, sought to drain the accounts while overseas. His efforts were frustrated by the quick action of the Mesa PD, FRS and the financial institutions. Subsequently, FRS obtained a seizure warrant and later a court order forfeiting over \$270,000 in cash seized from the bookkeeper's accounts plus a vehicle and residence. The vehicle will be returned to the lien-holding creditor, but the residence will be sold in an effort to compensate the victim.

## Initiatives

Nationwide Funnel Account Project: FRS continued its collaboration with Homeland Security Investigations and other agencies to combat money laundering conducted by DTOs and other illegal organizations located throughout the United States in a nationwide federal and State anti-funnel account project. FRS procured 11 seizure warrants targeting 492 suspected straw-owned Arizona bank accounts illegally used by the criminal organizations to funnel almost \$16.5 million dollars in racketeering proceeds from various parts of the country to Arizona. During FY15, nine of the 11 seizure warrants were issued which were resolved by judgment in the State's favor. Two cases are pending. Criminal organizations arranged for out-of-state cash deposits to be made into bank accounts maintained in Arizona. The deposits were often made by unknown individuals and structured in amounts below \$10,000 to avoid reporting requirements and to conceal the movement of the funds from law enforcement and regulators. The deposits were often quickly followed by cash withdrawals in Arizona. The funneled cash is believed to be distributed to unknown persons associated with the criminal organizations. The funnel accounts are often used for short periods of time before being closed. Due to the ephemeral nature of the deposits, trapping the funneled money is very difficult. To date, FRS has seized approximately \$724,872 from 366 accounts. Of this amount, approximately \$630,339 has been ordered forfeited to the State. This project has: (a) resulted in the closure of bank accounts used to launder illegal proceeds; (b) led to changes in national banking procedures designed to discourage funneling; and (c) discouraged would-be straw account holders from partnering with criminal organizations to funnel money.

# Criminal Division (*continued*)

## FINANCIAL REMEDIES SECTION

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.

### Overview of Accomplishments

In FY15, FSP had 945 open cases and resolved 321 of them. FSP cumulatively charged 346 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 approximately 2500 victims and obtained restitution in excess of \$30,629,905 and \$8,285,885 in court ordered fines. In addition, FSP managed 16 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 102 defendants were prosecuted for violation of their terms of probation.

### Major Cases

#### *State v. Kenneth Plein*

Plein sold investments in real property to victims. He sold these investments through his businesses, Plein Enterprises, Inc., Plein Realty Enterprises, LLC and Tri-Star Realty, LLC or The Plein Family Trust. Plein promised a set percentage return on the investments and represented to the victims that their investments would be secured by a mortgage upon the property purchased with their money. However, Plein either never recorded deeds of trust on the property in favor of the victims, or otherwise recorded the deeds of trust with lien positions not favorable to the unsuspecting victims. Additionally, Plein also sold investments involving the same property to multiple victims. Neither Plein nor his businesses were registered with the Arizona Corporation Commission (ACC) as securities dealers or salesman. Plein was charged with 36 counts, which included charges for Fraudulent Schemes and Artifices, Theft, Sale of Unregistered Securities and Transaction by Unregistered Dealer or Salesperson. ACC obtained a judgment against Plein for \$19.8 million dollars, which represented the full amount of loss incurred by his victims. In July 2014, Plein pled guilty to Fraudulent Schemes and Artifices and four counts of Theft. He stipulated to pay the full \$19.8 million dollars in restitution owed to the victims arising out of the ACC judgment. Plein was also sentenced to two years in prison and seven years of supervised probation. Unfortunately, Plein and his companies went bankrupt. Several of the victim investors filed claims in the bankruptcy court, receiving some restitution from the bankruptcy distributions. Additionally, Plein and his children were also the beneficiaries of \$4 million dollars in life insurance proceeds after Plein's wife passed away. Plein and his children agreed to assign all of their interests in the insurance proceeds to satisfy the ACC judgment. Restitution matter is still pending.

# Criminal Division (*continued*)

## *State v. Wendy Saulnier*

Saulnier was an intake employee for DES who stole a returned EBT card in the name of Darrin Graham. In October 2011, DES computer records show that Saulnier changed the mailing address of the returned EBT card to her home address. As a result, DES issued a new card to her address and Saulnier began purchasing food with the EBT card. To continue the benefits, Saulnier accessed the DES computer system and entered false assistance renewal applications. Saulnier's actions caused DES to suffer a \$5,235 loss. Saulnier pled guilty to Unlawful Use of Food Stamps and was ordered to pay \$5,235 in restitution, perform 336 hours of community service and serve three years of probation.

## *State v. Indrani Gaston*

Gaston was sentenced to four years in prison for Fraudulent Schemes and Artifices, after stealing \$363,325 from a 92 year old victim. Gaston became a companion for the victim after his wife of 40 years died in 2007. Gaston was the wife of his lifelong friend who died in 2005. Before she died, the victim's wife handled all of the couple's financial affairs throughout their marriage. In 2008 Gaston owned a home in Gilbert, but split her time between her home and the victim's Munds Park home as his companion and caretaker. Gaston agreed to assist the victim by writing checks to pay bills and household expenses. Gaston completed the checks, logged them into the account registers and had the victim sign them. Gaston logged checks into the victim's check register as being payable for household expenses, but the cashed checks were payable to Gaston for much higher amounts. Gaston intercepted the account statements before the victim could see them. Over the years, Gaston became a signer on the victim's bank accounts and in 2009 withdrew \$95,879 from a line of credit secured by the victim's home, which was previously free of any mortgages. Gaston was ordered to pay restitution in the sum of \$363,325 to the victim and \$95,879 to Wells Fargo, who agreed to not enforce the lien on the victim's home. It has been determined that Gaston gambled away all of the stolen funds at casinos.

## *State v. Kevin Nazario*

Nazario was indicted on Sexual Exploitation of a Minor, a dangerous crime against children. Nazario had a prior conviction for molestation and a new investigation linked him to using a Russian web server to download child pornography. It was learned that the defendant was on probation for his previous conviction and the probation officer was contacted and decided to conduct a probation search. The computer forensics team located three thumb-nail sized images of child pornography on his computer. The defendant pled guilty to on Sexual Exploitation of a Minor, a dangerous crime against children and was sentenced to 20 years in prison.

## *State v. Brittany Underwood*

Underwood purchased a list of personal identifying information from an email address originating in Asia. She used this information to purchase cars, personal goods and rent condominiums throughout Arizona. At the time of her arrest, Underwood was in possession of the list of personal identifying information and a small quantity of methamphetamine. She pled guilty to and was sentenced to ten years in prison.

## *State v. Melissa Coe*

Coe was charged with numerous counts of Theft, Forgery, Mortgage Fraud, Unlicensed Broker, Money Laundering and Fraud Schemes based upon her repeated acts of deceiving individuals regarding real estate purchases and investments on purchasing homes at Trustee sales. There are ten named victims in the Indictment, and to some she represented she was a Realtor or a lawyer, or was working with a law firm to manage the investments. In each of the transactions, Coe did not invest the money as she represented, nor did she put the money toward



# Criminal Division (*continued*)

the purchase of any home other than her own. In particular, there was one family who managed to get \$41,813 to buy a home that Coe had shown them. Coe and these victims met at First American Title Company to prepare escrow documents. After escrow was opened, and Coe had received a check from these victims made payable to Coe's TJ Law, Coe then cancelled the escrow without knowledge of the victims. Four weeks later, when the victims called Coe to ask when they could get into the house, she told them the owners decided not to sell, and made excuses about returning the victims' money to them. Sadly, these victims did not receive any of their money back, nor did they get a home.

Neighbors of Coe also were victims as Coe convinced them to invest \$36,000 into an "investment opportunity" to help with foreclosures in Hispanic communities. She represented to the victims that they would make 40% return within 60-90 days. Coe provided these victims a written agreement purportedly from the law firm of Tiffany and Bosco, and a Real Estate Acquisition Contract allegedly prepared by Mike Bosco. Coe made no such investment with the victims' \$36,000 and made excuses and false promises to the victims when they demanded she return their money. They never received any funds back from Coe. Coe used all the stolen money to fund her own lifestyle, purchasing a home and vehicles and other personal property. The amount of loss was over \$333,641. Some of her victims were repaid all or a part of the money she took from them. Prosecution is ongoing.

## *State v. Michael & Tanzia Reynolds*

The Reynolds represented to 11 named victims that they were in the business of payday and title loans. They convinced their victims that they were in need of capital to open additional stores and to fund more loans to their "customers". They presented false financial records to the victims on which the victims relied upon. They told their "investors" that they would receive a set amount of monthly interest on the amount they contributed or that they would earn a portion of the business proceeds. They also submitted a false financial summary to Windstone Capitol upon which that business relied upon when entering into a business contract with the defendants. The Defendants met many of their victims through their children, as they were the parents of their children's' friends and socialized together. None of the funds went into the purported businesses, but was used to finance their extravagant lifestyle. The amount of victim losses is approximately \$1,000,000. Prosecution is ongoing.

## *State v. Bernard & Monica Le-Uh*

The Le-Uhs owned and operated Nicben African Caribbean Market in Glendale where they committed fraudulent food stamp transactions up to the sum of \$2.1 million dollars. The couple was charged with various counts including Conspiracy, Fraudulent Schemes and Artifices, Illegally Conducting and enterprise, Money Laundering, Unlawful Use of Food Stamps and Computer Tampering. In April 2015, Bernard Le-Uh was sentenced to four years in prison followed by three years of probation and Monica Le-Uh was sentenced to two years of probation. Restitution matter is still pending.



# Criminal Division (*continued*)

## *State v. Larry Dahl*

Dahl, who was an attorney at the time, embezzled client funds directly from interest-bearing money market accounts by writing checks payable to himself. To perpetuate this scheme Dahl constantly transferred money between 46 client money market accounts to create the illusion of accurate individual account balances. Dahl continued his theft from clients from January 2001 through December 2005. Dahl gambled and lost \$2,940,439 he had stolen. Dahl was disbarred from the practice of law in 2006. In June 2015, Larry Dahl pled guilty to Fraudulent Schemes and Artifices, Money Laundering and, Theft. Dahl was sentenced to 3.25 years in prison followed by seven years of supervised probation. Dahl was also ordered to pay \$2,940,439 to the victims.

## *State v. Susan Rall*

In July 2015, Susan Rall pled guilty to Theft. Rall, through entities owned by her, processed and approved fictitious purchase orders in the amount of \$34,651 for the Arizona Department of Environmental Quality (ADEQ). The false purchase orders were payable to her entities and were purportedly for ADEQ monitoring sites that did not exist. All of the checks issued for payment by ADEQ were endorsed and deposited into the bank accounts for Rall's entities. During the scheme, Rall cancelled four fraudulent purchase orders that totaled approximately \$19,000 when it appeared that ADEQ was checking on the invoices. Prosecution is ongoing.

## HEALTH CARE FRAUD & ABUSE SECTION

HCFA, also known as the Arizona Medicaid Fraud Control Unit (MFU), investigates and prosecutes health care fraud crimes that impact the State's Medicaid program known as Arizona Healthcare Cost Containment System (AHCCCS). HCFA is also responsible for investigating allegations of patient abuse and neglect that take place within health care settings that receive AHCCCS funding. HCFA typically investigates and prosecutes cases that involve the falsification of medical records; filing of false or inflated Medicaid billing claims; thefts and embezzlements from AHCCCS clients and health care institutions; illegal diversion of prescription drugs by health care providers; and the physical, sexual and emotional abuse of residents being cared for in AHCCCS-funded facilities.

### Overview of Accomplishments

HCFA continues to be recognized as a national leader among the nation's other 49 Medicaid Fraud Control Units (MFCU). In April 2015, according to the Office of Inspector General for the United States Department of Health and Human Services, Arizona was ranked as the third highest in offenders being sentenced among all 50 MFCU's.

HCFA continues to work collaboratively with federal law enforcement partners including the Department of Health & Human Services Office of Inspector General (HHS-OIG), DEA and FBI. These collaborative efforts have been essential in combating the enormous problem of health care 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

# Criminal Division (*continued*)

Prevention Coalition, U.S. Attorney's Health Care Fraud Task Force, Yavapai County Partners Against Narcotic Trafficking (PANT), Yavapai County Elder Abuse Coalition, Coconino County Drug Task Force and Adult Protective Services/Area on Aging Response Team.

Overall, during the past 12 months, HCFA received 165 formal allegations/complaints regarding fraud, misuse of funds, and patient abuse in the AHCCCS program. Of this number, 107 case referrals were opened for a full investigation, 89 of which were fraud cases and 18 of which were patient abuse/financial exploitation cases. HCFA charged 82 defendants and sentenced 42 defendants during the year. HCFA team members participated in 27 outreach presentations to assist partner agencies with the detection, investigation and prosecution of crimes committed in the AHCCCS program.

## Major Cases

### *State v. Nelda Jean Nicholson*

While working as the Chief Financial Officer at an AHCCCS funded social service agency, Nicholson stole over \$100,000 from the agency. Nicholson used her position to commit fraud by issuing 124 checks to herself that she would deposit into her own bank account, as well as converting company checks to cash, which she then kept. She was charged with 126 counts of fraud-related criminal offenses. Nicholson was convicted of Fraudulent Schemes & Artifices and Theft and was sentenced to 3.5 years in prison.

### *State v. Pamela Jacqueline Williams*

Williams worked for an AHCCCS-funded care agency in Tucson, where she provided in-home care to several patients. Williams was terminated by her employer, but continued to provide care to the victim in this case. The investigation revealed that Williams had convinced the victim to grant her power of attorney. In addition to paying herself \$425 a week for no work performed, Williams also forged several unauthorized checks from the victim's account for personal gain. Williams was charged with Fraudulent Schemes & Artifices, Theft and Financial Exploitation of a Vulnerable Adult. She was convicted of Theft and Financial Exploitation of a Vulnerable Adult and was sentenced to 3.5 years in prison.

### *State v. David A. Lujan*

In the process of investigating two related cases, HCFA developed information indicating Lujan had knowledge that his wife, Lavera Matzkanin and her daughter Lindsay Abstein were turning in false timesheets for the AHCCCS funded respite care of Matzkanin's son. Records revealed that Lujan received money from Abstein and Abstein was receiving money from Lujan. Lujan was convicted of Facilitation to Commit Trafficking in Stolen Property and was sentenced to one year in prison.

### *State v. Brittney Williams*

Williams was an employee at an AHCCCS funded group home, where she displayed a picture on her cell phone that showed a client with her hands bound with duct tape and a strip of duct tape covering part of the client's mouth. Williams claimed she had done this to the developmentally disabled and non-verbal patient as part of the victim's "sensory therapy." The claim of "sensory therapy" was refuted by other employees. Williams was convicted of Vulnerable Adult Neglect and sentenced to two years of probation and seven months in jail.

# Criminal Division (continued)

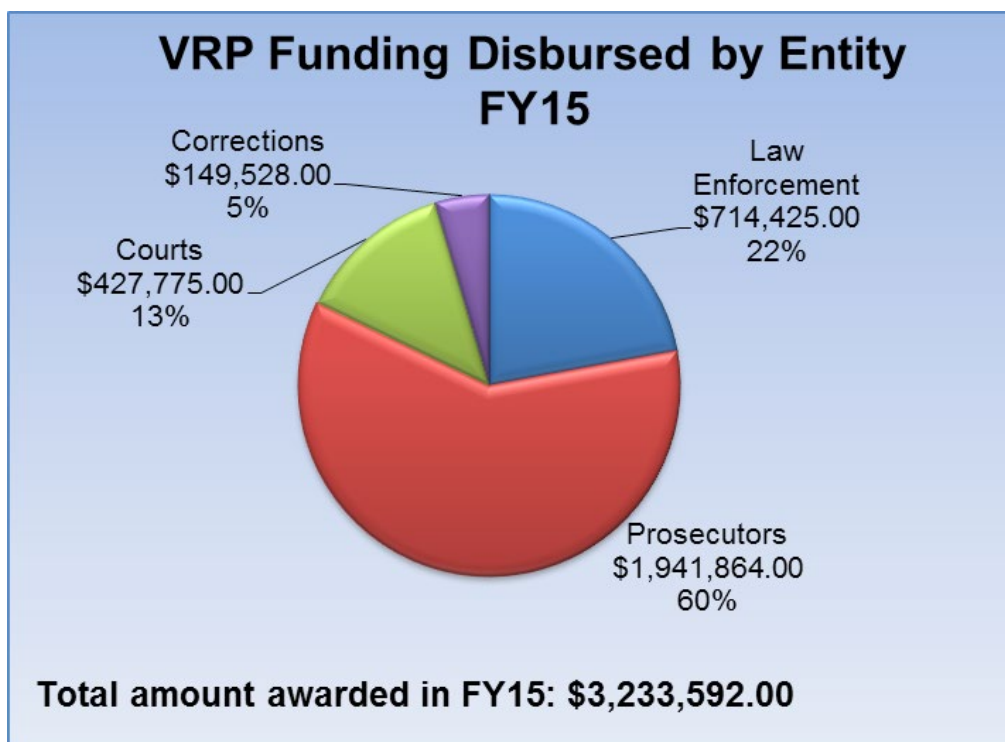
## OFFICE OF VICTIM SERVICES

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

### 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 FY 2015, advocates provided over 20,000 mandated and over 80,000 non-mandated services to 9,895 victims.

The office also received and investigated 35 allegations of victims' rights violations statewide and audited 13 agencies who receive funding from the Victims' Rights Program. Grants from the Victims' Rights Program totaling \$3,233,600 were awarded to support 57 criminal justice agencies in the provision of mandated victims' rights. The Grants Management System (GMAN), which was created during FY14, was utilized to successfully administer the entire FY15 fiscal year grant process.



# Criminal Division *(continued)*

To assist agencies with implementing and providing victims' rights, the Victims' Rights Training program provided 68 victims' rights trainings to 1,904 professionals statewide. Eight of the separate training curriculums were revised to include new information and updates to legislation and other pertinent issues. Also in FY15, OVS provided Victims' Rights training to all new Criminal Division hires and interns, as well as new hires and interns in the Criminal/Capital Appeals Sections. A total of 49 new hires were trained.

OVS continues to participate and serve as a leader state-wide on victims' rights issues. One example of such activities is the recognition of National Crime Victims' Rights Week with a statewide event that was held on April 21, 2015. Attended by 330 victims' rights professionals, this event was planned and presented jointly by AGO along with the Arizona Governor's Office, Maricopa County Attorney's Office, Department of Corrections and Department of Juvenile Corrections. The event recognizes individuals in Arizona who made significant contributions to victims' rights during the year. The Attorney General personally recognized five individuals and teams at the event.



*OVS Staff and AG Brnovich at the 2015 Victims' Rights Week Recognition Event  
April 21, 2015 at The Duce, Phoenix, AZ*

## Major Cases

### *State v. Ramon Martinez-Villareal*

In April 1983, the defendant was convicted of two counts of first degree murder of two ranch hands in Santa Cruz County and subsequently sentenced to death. His death sentence was vacated on appeal after he was found to be mentally incapacitated and ineligible statutorily for execution competency issues arose before he could be re-sentenced. In 2011, parties reached an agreement in which the defendant would be placed in the Arizona State Hospital (ASH) restoration program indefinitely. In February 2015, a new judge in Santa Cruz County scheduled a Status Conference to discuss the defendant. The advocate contacted all of the victims' family members and made arrangements for those who wished to attend the hearing or participate telephonically. The victims were concerned that the new judge would not have the background as that of the former judge. The advocate worked



# Criminal Division *(continued)*

to reassure the family that it was unlikely that release was an option for the court. Although victims' rights are still applicable in the defendant's criminal case those rights do not transfer to a civil case. The victims will not be notified of petition hearings and will not be able to attend. After speaking with the civil AAG, the advocate was able to provide victims with an option under Title 36 which will allow family members to file a notice of demand with ASH to be notified before the release or discharge of the defendant from the hospital.

## *State v. Ronald Zur*

The defendant, while acting as a financial expert, solicited funds from clients and allegedly gambled the money away at off-track betting sites. The victims in this case, were actively involved during the entire prosecution and expressed their opinions on the case to the prosecutor. Over two years elapsed between the indictment and plea agreement. The victims were able to prepare their impact statements for sentencing. The victims agreed that they wanted restitution, but did not believe that restitution alone would be a sufficient punishment. They recommended prison along with restitution and probation. Sentencing occurred in February 2015. All victims in the case attended the hearing. The statements made by the victims lasted over one hour with two of the victims providing very emotional stories on how the crime affected their lives in explaining to the court their reasoning for recommending imprisonment. The judge sentenced the defendant to seven years of probation, three months in jail and ordered \$134,000 to be paid in restitution. The victims were pleased with this sentence and thought it was fair.

## 2015 Distinguished Service Awards

Attorney General Brnovich presented the following awards to this year's recipients during National Crime Victims' Rights Week:



Martha Hennek  
Office Assistant, Victims' Rights Program, Mohave County Sheriff's Office  
2015 Distinguished Service Award – Advocacy/Direct Services

Deborah Fresquez,  
Domestic Violence Victim Advocate, Victim Witness Services  
for Coconino County  
2015 Distinguished Service Award – Innovative Practices



# Criminal Division *(continued)*



Arizona Supreme Court Commission on Victims in the Court (COVIC)  
Arizona Supreme Court  
2015 Distinguished Service Award – Public Policy



Scottsdale Domestic Violence Action Team (DVAT),  
Scottsdale Family Advocacy Center  
2015 Distinguished Service Award – Service Coordination

Prescott Valley Police Department – Family Violence Unit  
2015 Distinguished Service Award – Leadership



# Criminal Division *(continued)*

## SPECIAL INVESTIGATIONS SECTION

### Overview of Accomplishments

In FY15, SIS opened 532 cases. SIS Major Fraud units devoted significant resources to advance priority 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 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 indicate calls for assistance from the public and other law enforcement agencies remain at high levels.

- Law Enforcement Assists 5,539
  - TRAC - Non-MOU Assists 4,962
- Law Enforcement Training Presentations 42
  - Number of Individuals Trained 529
- Duty Agent Contacts 2,079



*Attorney General Mark Brnovich and Criminal Division Chief Counsel Donald E. Conrad  
with SIS staff members*

### 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.



# Criminal Division (*continued*)

## *State v Indrani Gaston*

As noted above, SIS Special Agents investigated this case and participated in a sentencing hearing for Gaston regarding an elderly financial exploitation case involving nearly \$1 million dollars.

## *State v Troy Truvillion*

In December 2014 SIS Special Agents investigated this case and participated in a sentencing hearing for Truvillion who had two separate Fraudulent Schemes and Theft cases. Truvillion was sentenced to one year in jail and seven years of probation with white collar terms and ordered to pay restitution in the amount of \$2.4 million dollars to be distributed to four separate victims.

## *State v Shanna Katz*

SIS Special Agents worked with FSP prosecutors to resolve a multi-voter case involving defendant Katz in September 2014. Katz pled guilty to Illegal Voting and received probation.

## *Jamaican Lottery Fraud Damming Warrant*

As noted above, SIS Special Agents assigned to the AFCTF initiated an investigation that centered on specific individuals in Jamaica who were receiving large amounts of money from the elderly people in Texas, New Mexico, Arizona and California. Investigators learned that the Jamaican suspects called and emailed elderly victims claiming that the victims won a foreign lottery and needed to send several hundred dollars to the Jamaican individual in order to collect their lottery winnings. Further investigation revealed that these claims to be fraudulent and the elderly victims lost much of their retirement savings to this scam. Damming and Seizure Warrants were authored identifying the specific Jamaicans and elderly victims in Arizona. As a result, investigators returned \$14,289 back to elderly victims. Investigators also identified two Jamaican Lottery Fraud co-conspirators and seized their earnings, which totaled \$1,290.

## *Carlos Moreno*

Drug Trafficking/Money Laundering Organization: In August 2014, SIS Special Agents assigned to the AFCTF conducted an investigation into a Mexican-based Drug Trafficking/Money Laundering Organization headed by Moreno. Moreno conspired with Celeny Palacios and Alonso Palacios to traffic heroin, cocaine, methamphetamine and marijuana from Mexico to the Midwest. At the conclusion of this two year investigation, the AFCTF served search warrants at locations controlled by Moreno and the Palacios'. The result of those search warrants led to the seizure of 31 pounds of methamphetamine; 18 pounds of heroin; 24.5 pounds of cocaine; 454 pounds of marijuana; one military-grade ballistic vest; three weapons; three vehicles and \$42,382 in US currency. Moreno and Celeny Palacios were charged for their drug trafficking-related crimes.

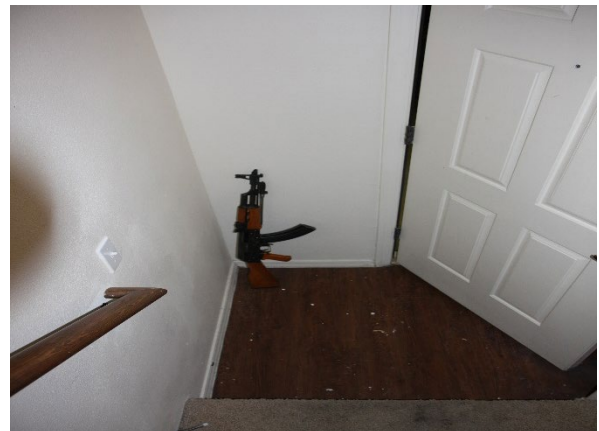


# Criminal Division (*continued*)

## *Miguel Guevara*

Drug Trafficking/Money Laundering Organization: In September 2014, SIS Special Agents assigned to the AFCTF initiated an investigation of heroin trafficker Guevara. During the investigation, Guevara met with an unknown male, who provided him with two kilograms of heroin and one quarter kilogram of cocaine. As a result of the investigation, Guevara was arrested for selling heroin and methamphetamine to Melody Smith and Arik Lizarraga in April 2014. A search warrant resulted in the seizure of 2.5 kilograms of heroin; four weigh scales used to weigh illegal drugs; two money counting machines; 13 firearms, one of which was reported stolen; four vehicles and \$10,000 in US currency.

During an interview with Guevara, he stated he had been a heroin trafficker for several years and received two to four kilograms of heroin from a source in Mexico, supplying in-state and out-of-state customers. Guevara also stated he receives assault rifles and handguns, which he smuggles to Mexican drug cartels. Guevara and Javier Carmello were charged for their drug trafficking-related crimes due to this investigation.



## *Meineke Car Center*

SIS Special Agents conducted an undercover proactive auto repair operation at this Tucson automotive repair shop, resulting in unnecessary repairs costing \$963. A consent judgment was reached in the matter, and the franchise owner agreed to relinquish operation and ownership of his franchise and payment of \$28,500 in penalties and fees. The auto repair shop has since closed.

## *Camelback Consign & Design*

Consumer fraud action was filed against this consignment business for failing to process consignments in a timely manner and failing to provide proceeds of consignment sales to consumers. A default judgment was obtained awarding a total of \$508,538 in restitution, penalties, and fees.

## *Vintage Only, LLC*

This matter involved deceptive acts and practices involving the advertising and sale of vintage automobiles over the internet. A consent judgment was reached and the defendant agreed to pay \$537,820 in restitution, civil penalties and fees. The defendant is also prohibited from engaging in violations of the Arizona Consumer Fraud Act along with multiple other stipulations.



# Criminal Division (*continued*)

## *Suckerpunch Sally's, LLC*

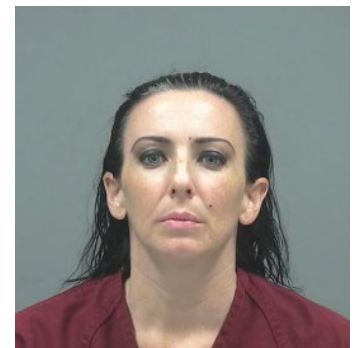
This matter involved the building and sale of custom motorcycles. A consent judgment was reached in the matter, and the defendant agreed to pay \$631,334 in restitution, civil penalties and fees. The defendant is prohibited from engaging in violations of the Arizona Consumer Fraud Act along with multiple other orders

## *Emissions Only, LLC*

In cooperation with investigators from ADEQ, SIS Special Agents conducted an undercover operation at this auto emission repair business. An employee used electronic devices to generate false results for motor vehicle emission inspections so the vehicles would pass the state required emission test without conducting the necessary emissions repairs. The defendant pled guilty to Illegally Conducting an Enterprise and was sentenced to nine months in jail and ordered to pay a \$10,000 fine.

## *State v. Leslie Diaz*

The Maricopa County Sheriff received information about phony prescriptions being called into pharmacies with the caller pretending to be with a local dental practice. An investigation determined that the person making the telephone calls was a former employee of the dental practice. In April 2014, Diaz was charged with 14 drug diversion fraud related criminal offenses. In February 2015, Diaz pled guilty to Criminal Impersonation and was sentenced to three years' probation, 45 days in jail and ordered to pay restitution/fines/investigative costs in the amount of \$1500.



## *State v. Leslie Diaz*

The second case involving Diaz began at the time she was being arrested on her first case. In October 2014, SIS Special Agents arrested Diaz pursuant to an arrest warrant. At the time of the arrest, it was determined that Diaz was now employed at a second dental practice, also an AHCCCS provider. The investigation revealed the new employer had also developed information that Diaz was responsible for generating prescriptions for drugs without the permission of the dentists whose name she was using. In December 2014, Diaz was charged with 12 drug diversion fraud related criminal offenses. In February 2015, Diaz pled guilty to Criminal Impersonation and was sentenced to three years of probation, 145 days in jail and ordered to pay restitution/fines/investigative costs in the amount of \$450.

## TUCSON CRIMINAL SECTION

TCS works with local, state, and federal law enforcement partners to disrupt and dismantle criminal organizations in Southern Arizona. The section specializes in fighting drug trafficking and money laundering focused against the Mexican cartels and United States-based transportation cells involved in the smuggling of drugs, weapons, and bulk currency across Arizona's southern border. TCS also specializes in complex economic fraud, public corruption, gang prosecutions and also financial exploitation of the elderly. TCS also recently partnered with Tucson PD's Internet Crimes Against Children (ICAC) unit to identify and prosecute suspects in Southern Arizona who transmit and acquire child pornography. In FY15, TCS took eight cases to trial and obtained guilty verdicts on all counts in all cases. The section also manages a year-long 38(d) clinical prosecution program with second and third-year law students from the University of Arizona College of Law and conducts regular legal trainings with its law enforcement partners.

# Criminal Division (*continued*)

## Overview of Accomplishments

For FY15, TCS reported 345 defendant initiations, and the section cumulatively prosecuted 369 cases with 772 active defendants. Total drug seizures included 175 pounds of methamphetamine, 84 pounds of heroin, 78 pounds of cocaine and 12,174 pounds of marijuana. During this time period, TCS also assisted 393 crime victims and obtained approximately \$11,548,938 in court-ordered restitution for Arizona victims of economic crime. TCS also obtained approximately \$574,693 in court-ordered fines. Additionally, TCS-initiated civil forfeitures generated approximately \$2,999,195 of which \$2,044,086 was distributed in asset sharing to law enforcement partners.

## Major Cases

### *State v. Joel Rodriguez*

The defendant managed the Willcox Branch of FarWest Pump in Cochise County. In late 2013, the owner discovered a discrepancy in the checks the defendant claimed to have deposited and the actual bank deposit. SIS Special Agents conducted an analysis of bank and business records that revealed Rodriguez had stolen over \$850,000 from the victim business. The State placed restitution liens on the defendant's assets prior to his arrest and, as part of the plea agreement to Attempted Fraudulent Schemes and Artifices, liquidated those assets and recovered \$742,211 in restitution for the victim prior to sentencing. The court ordered the defendant to serve three years in prison and ordered \$31,000 in cash seized from defendant's residence was forfeited to the state.

### *State v. Laura Higley*

The defendant was employed as the office manager for The Caliber Group, a public relations firm. Tucson PD's investigation determined that the defendant used the owner's personal information to open credit cards without the owner's knowledge, charged personal items on those credit cards without authority and paid the resulting bills with company funds. Higley pled guilty to Fraudulent Schemes and Artifices and was sentenced to seven years of probation, 180 days in jail and ordered to pay the victim \$141,891 in restitution.

### *State v. Herbert Ivan Kay*

The financial advisor was sentenced in May, 2015 to five years in prison after being convicted in October 2014 of two counts of Fraudulent Schemes and Artifices. Kay's conviction followed a lengthy investigation by the FBI Tucson Resident Agency that showed how Kay built a Ponzi-type scheme over several years in which he infused his Limited Liability Corporations with new investor money and then used that money to help pay pre-existing business debts, obligations and investment rights of Kay's failed venture capital projects. Kay, who was stripped of his National Association of Securities Dealers securities trading license in 2004, still marketed and sold investments in residential and commercial developments in Puerto Penasco, Sonora, Mexico (Rocky Point) to victims. His prison sentence will be followed by a consecutive term of probation and he was ordered to pay more than \$8 million dollars in restitution to his victims.

### *State v. Michael Fricker*

The defendant, a principal of Phoenix-based Salt River Solar & Wind LLC (SRSW), was sentenced in May 2015 to five years in prison after being convicted of Fraudulent Schemes and Artifices and Illegally Conducting an Enterprise. The FBI Tucson Resident Agency determined that SRSW's business model relied heavily on incentives from Tucson Electric Power's (TEP) rebate program which offered a cash incentive for consumers to install solar

# Criminal Division (*continued*)

panel systems. In many instances, SRSW failed to reimburse customers for the contracted rebates even though TEP had issued the rebate incentive checks to SRSW. Fricker's prison sentence will be followed by a consecutive term of probation and his plea required payment of \$1 million dollars in restitution to his victims.

## *State v. Jesse Swaffar*

To combat crimes against children, the AGO has partnered with the Tucson PD's Internet Crimes Against Children (ICAC) Unit to identify and prosecute people in Southern Arizona who transmit and acquire child pornography. The internet has become a haven for the transfer of child pornography and file sharing services allow for instant transmission and acquisition of heinous images of child sexual abuse. Pursuant to a search warrant Tucson PD seized Swaffar's hard drives where subsequent analysis determined he had acquired thousands of images of child pornography via internet file sharing. During the investigation, the Defendant also confessed to acquiring these images and storing them on several hard drives. Currently, Swaffar is facing ten counts of sexual exploitation of a minor and a lengthy prison term. This prosecution is on-going.

## *State v. Shirley Gonzalez*

Tucson PD and APS determined that Gonzalez, over a four year period, stole over \$900,000 in assets belonging to her vulnerable adult employer. While working as contracted care provider, the Defendant fraudulently retitled the victim's car in the defendant's name and acquired a reverse mortgage on the victim's house for \$69,000, with no benefit or cash provided to the victim. By the time another care provider reported the defendant to APS, the victim's bills were delinquent, her utilities were at imminent risk of being shut off and other caregivers were spending their own money to buy food for the elderly victim. APS removed the victim from her home and the Elder Shelter Program placed her in temporary housing while her Arizona Long Term Care System (ALTCs) application was processed. The victim died penniless and alone at the care facility at age 72. At sentencing on one count of Fraudulent Schemes and Artifices, the court imposed an aggravated term of ten years in prison and ordered the defendant to pay \$917,271 in restitution.



## *State v. Maurice & Curtis Patterson*

Brothers Maurice and Curtis Patterson viciously attacked and robbed two elderly victims in Tucson. On the first occasion, the Defendants followed a 77 year-old man home from a Wal-Mart. Maurice walked up to the victim and punched him in the face, knocking the elderly man unconscious, took the victim's wallet and then ran to a vehicle where Curtis was waiting. Wal-Mart surveillance video showed Curtis targeting the victim shortly before the robbery occurred. On the second occasion, the Defendants followed a 66 year-old female home from a Ross store. The victim was almost home when Maurice approached her from behind, punched her several times, grabbed her purse and ran to the same vehicle where Curtis again was waiting. Ross surveillance video again showed Curtis targeting the victim shortly before the robbery occurred. At trial both defendants were found guilty of Robbery and Illegally Conducting an Enterprise. Curtis was sentenced to ten years in prison and Maurice was sentenced to 13 years in prison.

## *State v. Adriana Duran*

After a year-long investigation, in December 2014, DEA arrested 13 of 18 criminal targets of a large-scale illegal enterprise that trafficked methamphetamine and marijuana, along with smuggling bulk currency drug proceeds.

# Criminal Division (continued)

The investigation resulted in seizure of 4.66 pounds of methamphetamine, 803 pounds of marijuana, two pounds of cocaine and \$1.3 million dollars in bulk cash. The financial investigation also identified over \$400,000 attributable to illegal drug proceeds laundered through various bank accounts. Lead defendant Adriana Duran lived in a luxury Catalina Foothills home and was responsible for transporting millions in drug proceeds on behalf of Cartel members. Prosecution is ongoing.



## *State v. Ricardo Gallegos-Morales, et.al.*

FBI agents investigated members of a Mexican DTO who contracted with an FBI source for a \$20,000 hit on the victim who they believed had cheated the DTO on a marijuana deal. Gallegos-Morales and Rigoberto Espinoza-Encinas arranged for the victim to be kidnapped, for his family to be extorted for the perceived drug debt and then for the victim to be murdered. Erik Robles and Jose Ruiz-Translavina joined the source to complete the kidnapping while Adolfo Luzania-Coronado and Hector Ochoa waited in the getaway car. When the FBI arrested the group, Robles and Ruiz-Translavina both had handguns. All Defendants entered guilty pleas: Robles received 3.5 years prison; Gallegos-Morales was sentenced to 2.5 years in prison followed by three years of probation; Ochoa was sentenced to two years in prison; and Espinoza-Encinas, Ruiz-Translavina and Luzania-Coronado were sentenced to one year in jail and three years of probation.



## *State v. Bruce Brown et.al.*

US Border Patrol agents based at the Santa Cruz County Sonoita/Patagonia station seized nearly 1,100 pounds of marijuana in three different vehicle stops. Further investigation by agents with the DEA and SIS Special Agents revealed that the drivers were recruited and employed by Brown, a well-known drug trafficking coordinator based in Patagonia and Tucson. Brown arranged for the transportation of bulk marijuana by backpackers who would cross the loads through the desert to stash houses. Brown pled guilty to Illegally Conducting an Enterprise and Transportation of Marijuana for Sale, among other offenses, and was sentenced to eight years in prison.

## *State v. Francisco Tanori et.al.*

After DPS seized 162 pounds of marijuana from a hidden compartments in a truck stopped on Interstate 10, detectives began an investigation to identify the distribution cell directing the transportation. After a successful investigation, 118 more pounds of marijuana was seized and three coordinators responsible for recruiting drivers and escorting loads of marijuana from Douglas to Tucson or Phoenix were identified. Syndicate leader Tanori was sentenced to 6.5 years in prison for Illegally Conducting an Enterprise.



# Criminal Division *(continued)*

## *State v. April Rodriguez-Chavez*

The defendant body-carried 407 grams of methamphetamine inside seven balloons concealed in her abdominal, back and groin areas from Mexico into the United States. Officers from Customs and Border Protection arrested Rodriguez-Chavez after a narcotics dog alerted to the odor of illegal drugs on her person. In November 2014, the defendant was sentenced to 3.5 years in prison followed by a consecutive three year probation term and ordered to pay a fine.



## *State v. Jesus Cristobal Fisher et.al.*

After multiple violent incidents on Tucson's east side committed by the Eastside Crips, a law enforcement task force consisting of agents and detectives with the Tucson PD, DPS and the Bureau of Alcohol, Tobacco and Firearms (ATF) joined forces to dismantle the gang. In August 2014, after a year-long financial and undercover investigation, the task force arrested 17 members and associates of the Eastside Crips including one of its leaders, Fisher. Fisher coordinated both street level drug sales in Tucson and out-of-state drug trafficking and money laundering for the gang to fund its front business, an east side recording studio in Tucson. Fisher pled guilty to five felony offenses including Illegally Conducting an Enterprise, Misconduct Involving Weapons and Participating in a Criminal Street Gang, for which he was sentenced to 13 years in prison.

## *Operation Graceland*

DPS Gang Enforcement Bureau GIITEM Task Force conducted a short-term, focused undercover operation aimed at identifying gang members who were selling drugs and committing other illegal activities in South Tucson. Indictments were returned against 18 gang members. Thus far 16 defendants who sold drugs to confidential informants have pleaded guilty either to Solicitation to Sell illegal drugs or Attempted Sale of Illegal Drugs. Combined sentences from this successful collaboration totaled over 30 years of incarceration and over \$25,000 in fines.



## *State v. Charles Arthur Cagle*

Cagle had multiple prior felonies dating back to 1987 involving the sale of illegal drugs and weapons offenses. During a four-month investigation conducted by Tucson PD Street Crimes Interdiction Unit, Cagle was found to be selling methamphetamine and illegal guns. Cagle conspired to supply his criminal associates to conduct a home invasion to steal cocaine from a fictitious stash house and Cagle, as a prohibited possessor, also sold an illegal sawed-off shotgun modified to shoot down locked doors. When Tucson PD and SIS Special Agents executed a search warrant at Cagle's apartment, police found firearms, a large knife collection, and nearly \$10,000 in methamphetamine. After a jury trial, Cagle was convicted on 15 felony charges, including Possession of Methamphetamine for Sale, Trafficking in Firearms, Involving a Minor in a Drug Offense, and conspiracy to commit armed robbery. In May 2015, the defendant was sentenced to 62.75 years in prison.





