

ARIZONA ATTORNEY GENERAL  
MARK BRNOVICH



2019 ANNUAL REPORT



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## Arizona Attorney General's Office

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# General Brnovich

The role of the Attorney General – and his or her team – is to protect the people of Arizona and to ensure that the State’s laws are upheld. In every case that crosses our desk, and in all that we do, we are guided by a single directive that serves both as a powerful mission statement and the ultimate measure of our success: Let Justice Be Done.

It is an incredible honor for me to serve our State in this capacity. It is also a great privilege to lead the team at the Arizona Attorney General’s Office, which is composed of highly dedicated and talented public servants. As the state’s attorney and top law enforcement agency, we remain committed to making a difference every day for the people of Arizona.

One of our highest priorities is effective communication. Whether we are tackling consumer scams, pursuing child predators or upholding the rights of victims, information is power and it must be successfully disseminated. We are committed to providing timely information to Arizonans throughout the year and in this annual report.

The following pages provide a summary of our activities in the FY2019. While not an exhaustive list, the report highlights some of the biggest achievements of our divisions and sections. The Arizona Attorney General’s Office made great strides in significant areas over this past year and I trust that you will find this summary to be both interesting and helpful in reviewing our progress.

At the office of Arizona’s Attorney General, we take our mission – and our Constitution -- very seriously. In every situation that arises, we remain focused on the law of the land. Articulating and upholding our laws is essential to the administration of justice.

Respectfully,



Mark Brnovich  
Arizona Attorney General







*Attorney General Mark Brnovich*

Mark Brnovich is the Attorney General for the State of Arizona. The Attorney General is a statewide elected, constitutionally-independent officer. Elected to a four-year term, the Attorney General is the state's chief legal officer and law enforcer.

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Joe Kanefield is Chief Deputy Attorney General and Chief of Staff. 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.

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*Chief Deputy Joe Kanefield*

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
- Appeals & Constitutional Litigation Division
- Executive Office
- Operations Division
- Communications Division

## 2018 Employee Awards Ceremony

The 2018 Employee Awards Ceremony was held at the Talking Stick Arena where hundreds of employees gathered to recognize their hard work and celebrate their successes. Employees were nominated using a certain set of criteria across several different categories, and winners were chosen by the Executive Office and Division Chiefs. Congratulations to the 2018 Winners!



## **2018 Emerging Star**

Jhala Vaughn  
Calley Anderson  
Cristina Chenal  
John Gray  
Rachelle Lumppp  
Scott Hirsch  
Dustin Hemp  
Aimee Ludwig  
Scott Madsen  
Lynda Ficarra  
Caroline Shoemaker  
Nicole Napoli  
Michelle Hogan

## **2018 Leadership in Action**

Darilyn Harmon  
Jennifer McBride  
Stephanie Sanders-Paine  
Rebecca Eggleston  
Don Carroll  
Derek Hoogendoorn  
Marie Gonzalez  
Eryn McCarthy  
Lauren Johnson  
Evan Daniels

## **2018 Career Service Award**

Dora Berkey  
Jennifer Hunter  
Dorothy Jim  
Steve Duplissis  
Debbie Ferguson  
Mary Beke  
Kevin Ray  
Kathleen Sweeney

## **2018 Employee of the Year**

Erin McClelland  
Jose Munoz  
Courtney Bennett  
Stacey Canez  
Elli Balstad  
Anthony Steed  
Susan Hack  
Linda Fielding

## **Special Agent of the Year**

Annalisa Madsen

## **Excellence in Service**

Violet Leon  
Dianne McCoy  
Patti Majlish  
Margarita Londo

## **2018 Outstanding Team New Employee Orientation**

Paula Daniels  
Lisa Celaschi  
Laura Dominquez  
Camille Keltz

## **2018 Outstanding Team Phoenix 1 Duty Team**

Andrea Kawamura  
Julie Rhodes  
Scott Christensen  
Aline Luttinger  
Denise Valenzuela  
Patricia Bailey  
Hallie Doportto  
Erica Napoleon  
Karina Bernal

## **2018 Michael C. Cudahy Award for Mentoring**

David Wolak  
Tina Rohe  
Rebecca Salisbury  
Keith Thomas  
Paula Alleman  
Daniela Bojorquez  
Tom Chenal  
Corina Alvillar  
JD Nielsen

## **2018 Attorney Of the Year**

Greg Coordes  
Vincent Sottosanti  
Nicholas Klingerman  
Nancy Bonnell  
Andrew Reilly

## **2018 Outstanding Team - Community Outreach**

Fred Taylor  
Lucia Arteaga  
Courtney Bennett  
Betty Delano  
Ginnellie Gutierrez  
Michelle Rucker  
Leslie Russell  
Matthew Schiumo

## **2018 Outstanding Team Player**

Katie Prosis  
Erika Mansur  
Melissa Brown  
Kevin Smith



# Employee Recognition

## **2018 Outstanding Team**

### **CAFA Team**

O.H. Skinner  
Dana Vogel  
Evan Daniels  
Tony Napolitano  
Katie Jessen  
Lauren Johnson  
Elaine Boughner

## **2018 Outstanding Team**

### **Operation Degrostring**

Blaine Gadow  
Maura Quigley  
Gilda Martinez  
Vanessa Rios  
Maria Ramirez  
Sarah Garrett  
Dana Barney  
Arthur Schmeiser  
Shelby Tarrant

## **2018 Outstanding Team**

### **Health Unit**

Aubrey Joy Corcoran  
Patricia LaMagna  
Lou Caputo  
Jo-Ann Handy  
Nick Bacon  
Erin Cohen  
Koren Lyons

## **2018 Major Case Victory**

### **State v. Elise**

Eliza Ybarra

## **2018 Appellate Mentoring**

Dan Schaack

## **2018 Outstanding Team**

### **BCE Section**

Susan Agee  
Sarah Anderson  
Frank Armijo  
Sandra Carlson  
Melissa Cordova  
Eva Cruz  
Grace Davirro  
Haley Doster  
Christopher Dylla  
Andrea Freeman  
Shyla Freestone  
Linda Gonzales  
Richard Graves  
Tina Heer  
Lindsay Hughes  
Julie Jaegge  
Jan Jones  
Don Lawrence  
Joan McCarthy  
Penny Moore  
Diana Norris  
Hua Qin  
Gabriel Ruiz  
Gina Russell  
Michelle Schlosser  
Kele Sessions  
Matthew Silverman  
Jonathan Simone  
Sandra Slater  
Lilian Stewart  
Heather Suggs  
Yoshie Throssell  
Jill Wieden  
Janita Zendejas

## **2018 Major Case Victory** **Saban Rent a Car v. AZDOR**

Kim Cygan  
Irma Tarango

## **2018 Outstanding Team** **Prosecution of Jesus Bernal**

Jordan Emerson  
Lindsay St. John  
Marie Karmes  
Gabby Centorami  
Alberto Fimbres  
Brianna Jimenez

## **2018 Outstanding Team** **Prosecution of Gaven Robel**

Sean Coll  
Peni Cox  
Mark McClain  
Erica Williams

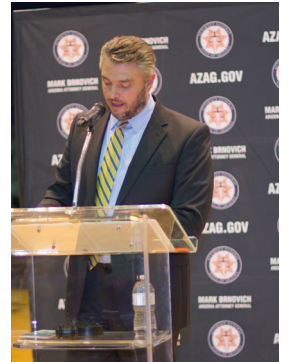
## **2018 Outstanding Team** **Investigation & Prosecution of** **CWT-506**

Nicholas Saccone  
Connie Barnell  
Maride Juarez  
GinaMarie Saris  
Caitlin Stumpf  
Gina Schelbrack  
Sandra Cardenas

## **2018 Outstanding Team** **Cox/Platt Federal 1983 Actions**

Tom Rankin  
Kenneth Hughes  
Victoria Baldner  
Stephen Womack  
Michael Dailey  
Eric Rothblum  
Beau Roysden  
Drew Ensign

# Employee Recognition





# Employee Recognition





Division 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.*

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### **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.*

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## 53RD ARIZONA LEGISLATURE, FIRST REGULAR SESSION

Arizona's 54th Legislature, First Regular Session convened Monday, January 14, 2019, and adjourned Sine Die on Tuesday, May 28, 2019. The 2018 election cycle produced over a dozen new freshman legislators and ushered in new leadership teams for both chambers.

After 134 days of session, a total of 1,318 bills were introduced. Of those, 320 were signed in to law by Governor Doug Ducey and 11 were vetoed. The general effective date for all legislation that did not contain an emergency clause or delayed effective date was August 27, 2019.

The Communications Team within the Office of the Arizona Attorney General ("AGO") monitored nearly 500 bills throughout the legislative process and engaged on several when appropriate. This effort would not have been successful without the timely and thoughtful feedback from the AGO's attorney's and subject matter experts.

The following is a brief overview of 2019 AGO legislative priorities:

### **Consumer Protection for Timeshares**

In response to the hundreds of complaints received annually by the Consumer Protection Section involving the timeshare industry, the AGO worked with Representative Shawna Bolick to pass House Bill 2639, legislation that will help Arizonans deal with the complex long-term contracts and potentially unlimited costs. While the introduced version contained very strong pro-consumer provisions including a 24-hour "cooling-off period" and an option to surrender the property back to the developer, the legislature ultimately stripped those provisions at the request of the timeshare industry. The AGO was able work with the legislature to adopt other pro consumer provisions including increasing the time period for a purchaser to cancel their contract from seven to ten days



and requiring significant front end disclosures. Timeshare sellers will now have to include a separate disclosure form that informs the purchaser of their actual and potential financial liabilities, the duration of the agreement, and a clear understanding that a timeshare is not an investment. These new protections ensure that timeshare consumers are empowered with the information they need to make sound financial decisions.

## **Reducing Criminal Division’s Reliance Upon Asset Forfeiture Dollars**

The Racketeer Influenced and Corrupt Organizations Act (RICO) allows prosecutors to pursue a civil cause of action in addition to criminal penalties for crimes committed through criminal organizations. The AGO’s partnerships with fellow law enforcement agencies have allowed the AGO to disassemble complex criminal organizations by effectively removing their basis of support: their assets.

There are numerous permissible uses for the collected monies outlined in Arizona Statute including equipment, training programs, and operating expenses which can include payroll. Historically, the Anti-Racketeering Revolving Fund (“ARRF”) within the AGO has been primarily used to fund approximately a dozen FTEs within the Criminal Division. However, the previous AGO administration greatly expanded the Criminal Division’s long term financial liabilities, increasing the number of Criminal Division employees funded via ARRF to a high of 50 FTEs. While this decision was made under the presumption that revenues would continue to rise and provide a stable funding source for these positions, for a variety of reasons, this has not proven to be the case. Coupled with philosophical differences from Attorney General Brnovich and recent reforms to forfeiture laws that were championed and supported by the AGO, a more reliable funding source was needed to provide long term funding obligations for the Criminal Division. Had no action been taken, the agency faced a fiscal cliff in 2019 that would have left the Criminal Division in a dire situation, likely resulting in layoffs.

In response, over the course of the last three years the AGO has secured \$1,500,000 in general fund dollars for FYs 18, 19, and 20 and \$1,400,000 for FY21. This, along with responsible internal fiscal management, brought the number of ARRF funded FTEs down to 21.5 in FY19. This year the Communications Team worked to secure an additional \$2,500,000 in general fund dollars for years 2022 and 2023 and raised the 2020 and 2021 funding levels by an additional \$1,000,000. Further, the AGO worked with the legislature to ensure that funding from the ARRF account would never expand beyond 16 FTEs, providing future protections for Arizona taxpayers against unreasonable budgetary expansion using the ARRF.

We are proud to report that these changes have reduced the number of currently funded ARRF positions within the agency to a remarkable low of 10.75 FTEs, drastically cutting the AGO’s current and future dependence on forfeiture dollars for critical public safety funding.

## **Securing Funding for Arizona Peace Officers Memorial Restoration**

The Attorney General is the statutory agent charged to lead the Arizona Peace Officers Memorial Board, the committee created by legislative act in 1986 and responsible for carrying out the annual Peace Officers Memorial Service in May. The memorial, located in Wesley Bolin Plaza, was dedicated in 1988, and includes the names of more than 330 Arizona peace officers who have died in the line of duty. Having now existed for more than 30



years, the memorial is in need of refurbishment and improvements that will help ensure the monument properly honors Arizona heroes who have paid the ultimate price for generations to come. To that point, the AGO helped secure \$1,000,000 in funding from the legislature using penalties and fees received from civil settlements with the AGO to provide improvements to the memorial. The architectural review process is currently underway and the board continues to meet with stakeholders to finalize plans for a targeted rededication in 2021.

## Updating Arizona’s Pregnancy Anti-Discrimination Laws

The Arizona Civil Rights Act (CRA) mirrors the Federal CRA in prohibiting employment discrimination on the basis of race, color, religion, sex, age, disability, and national origin. However, federal law includes pregnancy in the definition of sex, effectively protecting pregnant women from discrimination. While many states have codified this protection or have established other avenues to address these complaints, Arizona has not. This means that a victim can only take their complaint to the US Equal Employment Opportunity Commission (EEOC) for resolution, a process that can take years to resolve.

As the enforcer of the AZCRA, the AGO strongly feels that Arizonans should be able to work with the Attorney General’s Civil Rights Division to address pregnancy discrimination claims in a timely, local manner. To accomplish this, the AGO worked with community stakeholders to introduce Senate Bill 1365, sponsored by Senator J.D. Mesnard. Unfortunately, the bill was never given a hearing in the Senate Judiciary Committee. The AGO remains committed to updating Arizona’s anti-discrimination laws to add pregnancy protections to the AZCRA, and plans to reintroduce similar legislation during the 2020 session.

## Arizona’s FinTech Sandbox Updates

Building upon the groundbreaking FinTech Sandbox legislation championed by Attorney General Brnovich and adopted during the 2018 legislative session, the AGO Communications team worked with Representative Jeff Weninger to pass House Bill 2177, improving Arizona’s first-in-the-nation FinTech Sandbox program. Arizona’s FinTech Sandbox is the most active and successful regulatory sandbox in North America, with eight companies currently participating. Arizona launched its FinTech Sandbox in August 2018 to ease regulatory burdens for entrepreneurs and businesses offering innovative financial products and services. The program enables limited tests of innovative FinTech products under the supervision of the AGO while providing regulatory flexibility that nevertheless maintains compliance with Arizona’s core consumer protection laws.

Newly adopted improvements to the Arizona FinTech Sandbox program include:

- Businesses that provide a “substantial component of a financial product or service” are now eligible to participate, which will allow for tests of products that affect how financial services are provided in the marketplace even if the product itself is not regulated. This change will enable regulatory technology (“RegTech”) products to now seek entry into the Arizona sandbox as standalone participants.
- Sandbox applicants also now must demonstrate the cybersecurity measures they will undertake as part of a sandbox test to ensure consumer data remains private and protected.
- Sandbox tests involving payments will no longer require that consumers reside in Arizona to participate in a test as long as the transaction occurs in Arizona.

In September of this year, Attorney General Brnovich announced his office's participation in the American Consumer Financial Innovation Network ("ACFIN"), an initiative announced today by the Consumer Financial Protection Bureau. ACFIN will bring together both state and federal financial services regulators from across the United States to provide a forum for collaborating on innovation-fostering programs. ACFIN will seek to advance innovation that benefits consumers by enhancing competition, consumer access, and financial inclusion across its membership. Initial members of ACFIN include the Attorneys General of: Alabama, Arizona, Georgia, Indiana, South Carolina, Tennessee, and Utah.

Following last year's announcement of the AGO signing a cooperation agreement with Taiwan's financial regulator, the Financial Supervisory Commission, the AGO recently signed another cooperation agreement with the country of Poland. Both agreements are designed to increase the reach of Arizona's FinTech Sandbox.

## COMMUNITY OUTREACH

The Community Outreach Division of the Arizona Attorney's General Office is committed to protecting Arizona and its citizens through prevention programs and education. Community Outreach provides diverse presentations and programs designed to provide education and community awareness for children and adults on important topics such as anti-bullying, consumer scams, human trafficking, life-care planning, suicide prevention, opioid addiction and prevention, and internet safety. During FY2019, the Community Outreach Division conducted 784 presentations in 12 counties, including 25 in Spanish, and reached 67,038 seniors, parents, students, and other members of the community. Community Outreach staffed educational tables at another 65 community events, providing free resources to another 12,500 Arizonans.

### Law Enforcement Training

The Arizona Attorney General's Office ("AGO") is committed to supporting local law enforcement officers, agencies, and communities across Arizona. In partnership with federal, local, and state law enforcement agencies, the AGO provides tools, resources, and training to licensed and commissioned Arizona Peace Officers statewide. These partnerships focus on officer safety, life-saving medical care, law enforcement community

### **AZAG Community Outreach and Education**

### **Constituent Services Provided**

### **Fiscal Year 2019**

**Life Care Planning Packets Delivered: 16,920**

**Community Events Attended/Attendees: 65 / 12,508**

**Constituent Calls: 1,075**

**Constituent Emails: 739**

**Scam Alerts Delivered: 50,862**

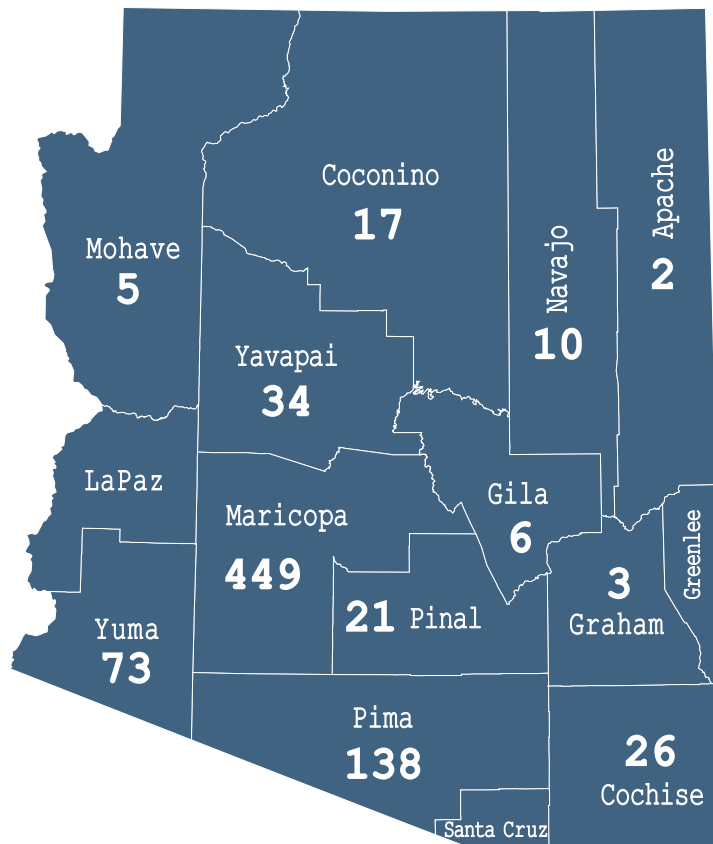
**Shred-a-thon Lbs of Documents Destroyed: 32,390**

relations, continuing and enhancing technical skills, and protecting Arizonans. In the past year, the AGO has sponsored dozens of free educational classes tailored to law enforcement officials including “street medicine” life-saving trauma courses, American Heart CPR / AED classes, handgun technical training, and opioid reversal drug (Narcan) administration classes. Varying law enforcement classes were conducted in almost every Arizona county during FY2019. Highlights of that instruction include four in-depth “train the trainer” classes on the administration of Narcan for 35 trainers, and an additional 78 officers instructed on how to administer Narcan. Approximately 219 officers were trained in basic and advanced street medicine statewide. Another 67 students were instructed in advanced handgun and skill-building handgun classes. Another 78 students were certified in life-saving CPR techniques. In total, nearly 500 officers or law enforcement personnel were provided free instruction through 56 statewide classes offered by the AGO in FY2019.

## AZ Attorney General’s Office Community Outreach and Education Presentations Per County

**Total: 784**

**25 Spanish Presentations**



**Fiscal Year 2019**

# Appeals and Constitutional Litigation Division



Division Director Beau Roysden

## MISSION:

*The Appeals & Constitutional Litigation Division provides leadership in federalism litigation, criminal appeals and capital litigation, civil appeals, election-related matters, defending the state statutes from legal challenges, enforcement of state statutes, legal opinions, ethics, and library and research services. It is committed to excellence, fairness, and integrity.*

## Division Summary

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

- *Managing the State of Arizona's civil and criminal appellate litigation*
- *Managing the State of Arizona's capital and post-conviction litigation*
- *Protecting the State's sovereignty from federal overreach*
- *Defending constitutional challenges to Arizona state laws*
- *Initiating election enforcement matters on behalf of the office*
- *Initiating civil enforcement actions for improper expenditure of public monies*
- *Legislative requests for investigation pursuant to SB 1487*
- *Overseeing the preparation and publication of Attorney General Opinions*
- *Enforcement of the state's open meeting laws;*
- *Overseeing the State's Fintech Sandbox*
- *Providing advice to all attorneys employed by the Attorney General with respect to ethics and professionalism issues*
- *Management of the Attorney General's Office Law Library*

## Special Litigation Section and Civil Appeals Section Year in Review

The Special Litigation Section, which is led by Solicitor General O.H. Skinner, fought for Arizona and Arizona consumers during the past fiscal year, scoring major victories at both the state and federal level. This included substantial victories in the fight against class action settlement abuse, important victories in defense of the state's laws, and major regulatory reform victories that will benefit Arizonans. The Solicitor General also coordinated amicus briefs and appeared in federal and state appellate courts, including the U.S. Supreme Court on behalf of the State.

The Civil Appeals Section participates in all 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, employment, torts, juvenile law, administrative law, and workers' compensation.

## Major Accomplishments - Special Litigation Section

### A. Federalism Unit

The Federalism Unit is primarily responsible for protecting the state from overreach by the federal government and other states. The unit also often serves as the lead unit in defending state statutes against legal challenges in federal and state court. In the 2018-2019 fiscal year, the federalism team took part in high-profile litigation in both state and federal court, and pressed for pro-consumer regulatory reform.

#### Highlights

The unit went to the United States Supreme Court in *Arizona v. California*, bringing the original action to hold California accountable for improper efforts to reach into Arizona and assess and collect tax against Arizona businesses in violation of basic tenets of due process.

In *AACJ v. Brnovich*, the federalism unit again successfully defended important aspects of the State's victim's rights laws against a First Amendment challenge brought by criminal defense attorneys.

In *City of Phoenix v. State of Arizona*, the unit won an important appellate victory in the ongoing Roosevelt Row dispute in which the City of Phoenix sued the State over taxpayer protection provisions that were included in H.B. 2440 as part of a critical reform of the special taxation district policies in the state. After winning a victory in the trial court last year, the unit confirmed that victory with an affirmance from the Arizona Court of Appeals.

The unit scored a major win for the state in the D.C. Circuit in *Idaho Conservation League, et al v. Andrew Wheeler*, which affirmed the EPA's decision to impose no potentially preemptive hardrock mining assurance requirements in light of the robust and effective assurance systems that are already in place and proving to be effective in places like Arizona. This outcome represented an important win, and stands as a validation of the important steps the State has taken to protect the public and the environment.

In *Platt v. Moore*, the unit obtained a decision dismissing a challenge to the state's forfeiture laws in conjunction with attorneys in the forfeiture section in the Criminal Division.

The unit scored another victory in *Wildearth Guardians v. Provencio*, in which the Ninth Circuit rejected a challenge to a forest service rule relating to use of motorized vehicles to retrieve big game in Kaibab National Forest.

The unit was successful in urging the Department of Energy to initiate a rulemaking to establish a new, one-hour dishwasher category in order to allow consumers to have a dishwasher that can clean dishes effectively and quickly in response to consumer complaints about how existing efficiency requirements have made it so that current dishwashers are ineffective and push consumers to use more water and electricity through substantial pre-washing of dishes, added soap use, or repeat washing of the same dishes.

### B. Government Accountability Unit

The Government Accountability Unit ("GAU") is responsible for the Office's civil enforcement of state law

# Appeals and Constitutional Litigation Division

related to public bodies, public money, and state election law. In the 2018-2019 fiscal year, GAU engaged in multiple investigations and litigation that produced favorable changes in policy, settlements, and, in one case, a judgment in favor of the State.

## Highlights:

The Open Meeting Law Enforcement Team (“OMLET”) received 187 complaints, 114 of which resulted in inquiries to public bodies. A total of 147 complaints were closed. OMLET investigations resulted in identifying 34 violations that have been resolved in various ways, as well as 7 warning letters regarding potentially unlawful actions taken by public bodies.

GAU received 229 failure-to-file referrals from the Secretary of State’s Office regarding both political committees and lobbyists. Of those, GAU sent 143 notices of violation, and of those, 15 ultimately resulted in final orders imposing civil penalties.

In *State v. Tomlinson*, GAU secured a judgment removing a member of the Window Rock Unified School District from Office after successfully establishing that the member was ineligible for office at the time of election.

GAU conducted an investigation into a contract for services between the City of Sedona and the Sedona Chamber of Commerce. An investigative report identified apparent overpayments of public money that the City had rectified through City Council action. While the report was pending, the City also took action to ensure no further overpayments would occur.

GAU conducted an investigation into the City of Tempe pursuant to a legislator request under A.R.S. § 41-194.01 (also known as “SBI487”).

GAU successfully negotiated a consent judgment with the owners of a charter school who had used school funds to purchase sports tickets and other personal items resulting in \$180,000 returned to the State.

GAU brought a school procurement investigation and lawsuit against Scottsdale Unified School District (SUSD) based on a whistleblower complaint. The Office settled on favorable terms with the defendants, with SUSD agreeing to take remedial action to prevent such violations in the future and the architect agreeing to a multi-year ban from serving on a CMAR procurement committee in Arizona or as an architect on any project for K-12 school construction in Arizona.

## C. Class Action Fairness Efforts

The Class Action Fairness team within the Special Litigation Section carries out the Attorney General’s statutory duties under the federal Class Action Fairness Act, which includes reviewing hundreds of notices of federal class action settlements and stepping in to ensure that those settlements properly put consumers first. During the year, the team engaged in dozens of class action settlements and produced substantial wins for consumers at both the trial and appellate level.



## Highlights

In *Frank v. Gaos*, the team helped obtain one of the first critical statements from the United States Supreme Court on the dangers of *cy pres* class action settlements that send all the class action settlement proceeds to charities instead of class members. The Supreme Court did not reach the merits of the *cy pres* question, instead sending the case back down for additional proceedings, but Justice Thomas filed an opinion detailing the threat *cy pres* settlements pose to consumers and due process.

In the Ninth Circuit Court of Appeals, the team obtained a substantial consumer victory in *In re Easysaver Rewards*, obtaining a unanimous opinion that the highly restrictive coupons in the case did not warrant a multi-million dollar fee award. The opinion will serve as important precedent in the ongoing effort to stop abusive coupon settlements in which attorneys take all the settlement cash and leave consumers with nothing but highly restrictive coupons.

In the Third Circuit, the team obtained an important victory in *In re Google Cookie Inc. Cookie Placement*, with a unanimous opinion rejecting the *cy pres* only class action settlement entered into by the parties and sending the case back to the trial court.

In *Cowen v. Lenny & Larry's*, the team pressed the parties to renegotiate the Northern District of Illinois class action settlement so that over \$500,000 more went to consumers.

## Major Accomplishments - Civil Appeals Section

For the Civil Appeals Section, appellate briefing continued at a rapid pace in fiscal year 2019. ACL attorneys reviewed and/or drafted more than 450 appellate briefs in fiscal year 2019, including nearly 400 in the Arizona Court of Appeals and 26 in the Ninth Circuit. ACL civil appellate attorneys also participated in over 40 moot court exercises.

## Significant Cases

*Alma S. v. Department of Child Safety*, 245 Ariz. 146 (2019). The Arizona Supreme Court vacated a court of appeals' opinion and held that the court had erred in finding that mother whose parental rights had been terminated on grounds of abuse was not unfit and explained that the statutory termination grounds are "synonymous with unfitness." The Supreme Court further held that court of appeals had erred in conflating the fitness and best-interest inquiries and in holding that the child's interests must be subordinated to the parent's interests.

*Trisha A. v. Department of Child Safety*, 446 P.3d 380 (2019). The Supreme Court vacated the court of appeals' opinion and held that a parent must show a meritorious defense to set aside default judgments in dependency, guardianship, and termination hearings.

*Duff v. Lee*, 246 Ariz. 418, 439 P.3d 1199, 1201 (Ct. App. 2019): ACL attorneys successfully defended a challenge to the FASTAR, a trial program approved by the Arizona Supreme Court that provides for a fast-trial system for lower-dollar-value cases.

*Joelle M. v. Department of Child Safety*, 245 Ariz. 525 (App. 2018). The court of appeals affirmed the trial court's

judgment that the child was dependent based on medical neglect. The court explained that courts should not use a general, unitary standard in determining whether a particular child is dependent; the court must instead consider the discrete and special needs of the particular child, both to protect the child's best interest and meaningfully assess the parent's willingness and ability to provide proper and effective parental care and control of that child.

*Department of Child Safety v. Juan P.*, 245 Ariz. 264 (App. 2018). The court of appeals vacated the trial court's order granting father's Rule 59 motion and requiring the child's "immediate return" to Mexico to live with father (whom the child does not know well and whose language he does not speak) despite therapists' opinions that it would harm the child.

## AGO Criminal Appeals Section and Capital Appeals Section Year in Review

In fiscal year 2019, the Criminal Appeals Section and Capital Litigation Section worked to uphold the convictions and sentences of criminal defendants in Arizona. The Criminal Appeals Section filed 642 briefs, habeas answers, petitions for review, 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.

### Major Accomplishments - Criminal Appeals Section

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.

In fiscal year 2019, office restructuring resulted in CAS becoming part of the newly formed Appeals and Constitutional Litigation Division of the office. The transition has been seamless. Three attorneys left CAS during FY 2019 and were replaced. The caseload remains heavy but manageable, and the quality of the work very good. The amount of time required to respond to federal petitions of writ of habeas corpus continues to adversely affect productivity.



## Significant Cases

The State prevailed in the overwhelming number of appeals handled by CAS. The following published opinions are some of the successful cases:

*State v. Richter* – Although the Arizona Supreme Court held that the trial court erred in precluding Richter from raising a duress defense to charges that she abused, or allowed her husband to abuse, her children, the Court held that Richter was precluded from presenting “expert testimony” to support a duress defense. This was an important holding because “psychological evidence” presented “under the guise of observation evidence” acts as “a mere conduit for otherwise inadmissible testimony” and has great potential to confuse and mislead the jury.

*State v. Weakland* – A majority of the Arizona Supreme Court held that although the police in this case informed Weakland of Arizona’s “admin per se” law in a manner the Court held was unconstitutionally coercive in a case decided prior to Weakland’s DUI stop, the “good-faith exception” to the exclusionary rule did not require that the blood test results be suppressed.

The case is important, not only in the DUI prosecutions, but also because it made clear that evidence will not be excluded unless police engage in “deliberate, reckless, or grossly negligent conduct” in violation of the Fourth Amendment. This constituted a loosening of the unreasonably strict standard it appears the court had adopted only a couple of years prior.

*State v. Zeitner* – Zeitner obtained an abortion, paid for by AHCCCS, by falsely claiming that she had cancer—including falsifying a letter from an out-of-state doctor—which made her pregnancy “high-risk and life threatening.” Under these limited circumstances, AHCCCS is statutorily authorized to pay for an abortion. Upon learning of Zeitner’s fraudulent misrepresentations, our office prosecuted and convicted her on 11 counts, including defrauding AHCCCS. At trial, Zeitner’s medical records were admitted and her physicians testified against her. On appeal, the Arizona Supreme Court rejected her claim of “physician-patient privilege,” holding that “the federal and state Medicaid schemes, including sweeping patient record disclosure requirements, make clear that the physician-patient privilege must yield to the State’s interest in combating fraud where providers and beneficiaries are suspected of AHCCCS fraud.”

*State v. Gomez* – The Arizona Court of Appeals agreed with our assertion that, in a prosecution of aggravated driving under the influence because a passenger is under 15 years of age, the State is not required to prove that the defendant “knew” that the person was under the age of 15 years. The court held that the “plain language” of the statute required only that a person in the vehicle be under the age of 15; it did not make knowledge of that person’s age an element of the crime.

*State v. Burgess* – The Arizona Court of Appeals rejected Burgess’s assertion that the statute providing that it was not a defense to a prosecution for child prostitution that the victim “is a peace officer posing as a minor” was unconstitutional “because it lacks a rational basis for in-person solicitation of a child prostitute because the ‘defendant can see for himself that the prostitute is an adult.’” The plain wording of the statute “does not distinguish between in-person and other solicitations, reflecting that legislature’s intent to treat the various modes of solicitation similarly even though the ‘child’ is actually an undercover police officer.”

The court also agreed with our assertion in the State’s cross-appeal that the trial court erred in not enhancing

# Appeals and Constitutional Litigation Division

Burgess's sentences with two, rather than only one, prior felony conviction even though they were committed "on the same occasion." Accordingly, it increased Burgess's sentences from 15¾ to 28 years' imprisonment on each count.

## Major Accomplishments – Capital Litigation Section

The Capital Litigation Section's attorneys effectively litigated a tremendous number of complicated, high-stakes, high-profile capital cases in state and federal court during the last fiscal year. The number of cases pending in superior court on post-conviction review continues to decline as the post-conviction crisis from several years ago resolves. However, this decrease in state proceedings has translated to an increase in federal habeas petitions, which consume a tremendous amount of the Section's resources. This additional burden, combined with the recent departure of several experienced and high-producing attorneys, will make the next few years difficult for the Section.

## Execution Update

There is currently no legal impediment to resuming executions in Arizona. However, there is a practical impediment: ADC lacks the drugs necessary to carry out executions. If and when lethal-injection drugs are obtained, 14 inmates have exhausted their of-right appeals and the Section is prepared to seek execution warrants for those inmates. Two more inmates have recently been denied relief by the Ninth Circuit and will soon file their final appeals in the United States Supreme Court; these inmates will almost certainly be eligible for execution by mid-2020. Finally, two additional inmates have been denied relief by three-judge panels of the Ninth Circuit; those inmates will next seek rehearing by the Ninth Circuit and then relief from the United States Supreme Court. They will then join the list of inmates ready to be executed. Accordingly, there could conceivably be 18 inmates awaiting execution by the end of the next fiscal year. The ongoing lack of execution drugs will, without question, permit these inmates to initiate successive, and often frivolous, state and federal appellate proceedings, further burdening the Section's resources and delaying finality for crime victims.

## Significant Cases

### *Arizona Supreme Court*

The Section's attorneys successfully defended a number of convictions and death sentences in the Arizona Supreme Court this fiscal year. The court did not remand any capital cases for retrial or resentencing. The significant cases are:

*State v. Bush* – Late one night in 2008, Bush, heavily armed and accompanied by Shawna Forde (who is also on death row) and Albert Gaxiola, barged into an Arivaca home with the goal of stealing money and drugs to fund Forde's border vigilante group. Bush shot and killed Junior Flores and his 9-year old daughter, and shot and wounded Flores' wife. Bush received two death sentences and a number of terms-of-years sentences for his multiple non-capital convictions. The Arizona Supreme Court affirmed Bush's convictions and sentences. The court rejected Bush's numerous claims for relief, the most significant of which were that he confessed involuntarily, that the trial judge erred by failing to tell the jurors that he was ineligible for parole, and that the victim-impact statement given by Flores' wife exceeded constitutional limitations.

*State v. Sanders* – Sanders beat to death his girlfriend’s 3-year-old child. A jury sentenced him to death for the murder. Sanders also received non-capital sentences for two related counts of child abuse. On appeal, the Arizona Supreme Court affirmed Sanders’ convictions and sentences. This case was significant because, among a number of other issues, the court addressed at length the future-dangerousness element of *Simmons v. South Carolina*, 512 U.S. 154 (1994) (holding that when the State places a defendant’s future dangerousness at issue and state law prohibits his release on parole, the defendant must be permitted to advise the jury of his parole ineligibility). The court affirmed Sanders’ death sentence after concluding that the prosecutor had not placed Sanders’ future dangerousness at issue merely by discussing the facts of the crime and highlighting the brutality of the child’s murder.

*State v. Acuna Valenzuela* – Acuna Valenzuela murdered a man who had testified against him in a prior criminal proceeding. A jury sentenced Acuna Valenzuela to death, and a judge imposed various terms-of-years sentences for several related non-capital counts. The Arizona Supreme Court affirmed Acuna Valenzuela’s convictions and sentences on appeal. Among other issues, the court rejected Acuna Valenzuela’s argument that Arizona’s witness-elimination/retaliation aggravating factor, A.R.S. § 13-751(F)(12), is unconstitutionally vague. The court also rejected Acuna Valenzuela’s argument that a juror’s post-trial blog entry, which contained her memories and opinions of the trial and its participants, warranted a new trial, affirming in the process the court’s prior case law that a juror’s mental impressions are not admissible to impeach a guilty verdict.

## *Ninth Court*

The Section’s attorneys also achieved some significant victories in the United States Court of Appeals for the Ninth Circuit in the last fiscal year:

*Ernesto Martinez v. Charles Ryan* – Ernesto Martinez murdered Arizona Department of Public Safety Officer Robert Martin during a traffic stop in 1995. The Ninth Circuit affirmed the district court’s denial of habeas relief, rejecting Martinez’s claims of judicial bias, ineffective assistance of counsel, instructional error, and causal-nexus error. The court has since denied Martinez’s petition for panel/en banc rehearing. Assuming the United States Supreme Court denies certiorari in the coming months, Martinez’s appeals will be exhausted.

*Richard Hurles v. Charles Ryan* – Richard Hurles murdered a Phoenix librarian in 1992. In an opinion several years ago, the Ninth Circuit remanded Hurles’ case to District Court to conduct an evidentiary hearing on his claim that the trial judge was biased against him, as evidenced by her alleged personal involvement in a special-action proceeding the State initiated before trial. After holding the hearing and receiving testimony from the judge and other witnesses, the District Court denied relief. The Ninth Circuit affirmed in a per curiam opinion, finding that the district court had not clearly erred in its factual findings. The court also rejected an ineffective-assistance-of-appellate-counsel claim. The court has since denied Hurles’ petition for panel/en banc rehearing and, assuming the United States Supreme Court does not intervene, Hurles appeals will be exhausted in the next few months.

## Attorney General Opinions Year in Review

The Appeals and Constitutional Law division coordinates the drafting and publication of Attorney General opinions. A Deputy Solicitor General chairs the AGO Opinion Review Committee. In fiscal year 2019, the Attorney General received 15 opinion requests; two of those requests concerned the same issue and were therefore consolidated into a single request. In response to those requests, the Attorney General issued 4 formal opinions. Those opinions addressed: whether a proposed use of school district resources to protect the district's intellectual property would violate A.R.S. § 15-511; whether permitting the delivery and regulation of pari-mutuel wagering at racetracks through the use of so-called "historic" horse race terminals would jeopardize or violate Arizona's Indian Gaming Compact; whether payments for public retirement plan unfunded liabilities are excluded by Article 9, Section 20(3)(d)(i) from a political subdivision's constitutional expenditure limits; and whether children ages 18 to 21 in a jail education program through an accommodation school under A.R.S. § 15-913.01(C) are eligible for state education funding.

## Ethics Year in Review

Fiscal year 2019 was a year of some transition for ethics. Legal Policy Advisor Angela Paton began the fiscal year as ethics counsel for the office, assumed her new role as legal policy advisor, and Assistant Attorney General Jason Easterday was appointed as the new ethics counsel in February 2019. During the year, ethics counsel responded to numerous ethics questions from employees throughout the AGO. These questions encompassed a broad range of ethical issues pertaining to confidentiality, conflicts of interest, unauthorized practice of law, ex parte contact, and many others. Many of these questions resolved the same day when received. There were, however, some more complex questions where ethics counsel researched and analyzed issues, and ethics counsel was still able to provide advice and guidance in a prompt manner. Ethics counsel continued to review AGO employees' requests for outside employment, volunteer, or pro bono activities to guard against potential conflicts of interest. If ethics counsel determined there was a potential for a conflict between the employee's duties and the contemplated outside activity, ethics counsel provided an explanation for the denial of the request. Further, ethics counsel continued to review, analyze, and draft screening memoranda to protect against potential conflicts of interest. Lastly, ethics counsel continued to serve as chair of the AGO's Ethics Committee.

## AGO Library and Research Services

The Appeals & Constitutional Litigation Division (formerly 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 library budget monies spent on print materials, created a virtual law library on the Office's Intranet, and placed an increased emphasis on electronic research tools.

The library director, with the help of the AGO library committee and other AGO volunteers, assessed the Office's continuing legal research content needs in anticipation of proposals submitted by commercial vendors. After reviewing and analyzing submitted proposals, a contract was awarded for Thomson Reuter's Westlaw Edge platform. The new contract significantly expands access to legal research databases and provides new tools that

# Appeals and Constitutional Litigation Division

will enhance research and drafting proficiencies. Westlaw Edge also provides the office with the capability to strategically analyze litigation practice.

The library budget supports other specialized electronic research databases and print materials. The only print materials that continue to be purchased are treatises and practice materials that are not available on-line, and in which inter-library loans for this material would be difficult if not impossible to attain.

Machine-Readable Cataloging (“MARC”) records were added to an AG Office-only electronic catalog this fiscal year. This catalog will allow AGO researchers throughout the state to identify research materials in specific AGO libraries and easily determine if print materials can be borrowed. The catalog will also link researchers to web-based research guides and provide links to research databases accessible to state employees via remote access.

Training emphasis was placed on the new Westlaw Edge platform. Specialized research and the review of grant-writing projects were delivered to requesting AGO sections in fiscal year 2019. Overall, the AGO Library and Research Services section is functioning efficiently and in a cost-effective manner while delivering specialized services to AGO researchers.



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.*

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### **Division Summary**

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

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## Information Services Section

The Information Services Section (ISS) is comprised of system/security engineers, software and reporting support personnel, web administrators, litigation support professionals, and help desk technicians. ISS is responsible for managing the information technology infrastructure as well as providing technical support services to AGO staff.

### Overview of Accomplishments

*Oracle Cloud Migration* – The ISS Engineering and Software teams have designed, configured, and built a new cloud-based Oracle environment. This new environment will host the databases that support our case and document management solutions, Legal Files and Hummingbird DM. In the near future the databases will be migrated to this new cloud platform. The new configuration is significantly more advanced than the current on-premise servers. ISS is designing the Oracle Cloud-based solution to take advantage of some of the highest performing architecture. This architecture should not only support the new Legal Files case management system upgrade but also improve through-put on complex reports.

*Cage expansion at the Iron Mountain Datacenter* – AGO currently houses IT equipment in both the CAP Center basement and the ASET-endorsed Iron Mountain Datacenter. This configuration has provided failover and disaster recovery (DR) for AGO through the years. The engineering team is currently working with the Iron Mountain facility to establish a larger cage that will eventually allow AGO to collapse the CAP Center server room into Iron Mountain and place all of our IT Equipment together. Prior to the CAP Center collapse AGO will create, test and validate a cloud-based DR solution. This series of steps will enable the AGO to meet the requirements of ASET's "Cloud First" initiative.

*Windows 10 Upgrades* – The helpdesk team has been busy preparing for the replacement of Windows 7. They created a new Windows 10 image that will be used as new computers are deployed to AGO Staff. The applications running on the new computers will remain the same for now due to our need to meet Hummingbird integration



requirements. Once the new Legal Files Web solution is in use across AGO and the staff is no longer reliant on Hummingbird, ISS will be able to plan the upgrade of the Microsoft Office and Adobe platforms. These changes will be phased in due to the need to train staff on the new application versions. Stay tuned.

*Heightened Security* – ISS continues to work to identify and mitigate security issues in technology, policy, and practice. We are going to begin a phishing campaign internally to identify weakness in training without risk of damage. We are also evaluating some new tools that will assist in data loss prevention. ISS has adopted a “Least Privilege” model as a key component of securing the network. The least privilege model allows us to minimize any fallout from a security event. We are working to identify areas where more rights have been granted than are needed for job performance.



*Data Growth at the AGO* – ISS Engineering plans to add an additional 10TB-20TB of storage Spring 2020. We have also increased the disk-based backup solution allowing us to hold more backup data for restores.



*Point to Point Microwave Wireless Link* – We have installed antennas on the roofs of the CapCenter and Palm buildings, aligned, and configured them. The new microwave point-to-point link has been tested and shows significant improvement over the current Cox solution. AZNET is working with our engineering team to integrate the new link into their services so that the Cox line can act as a backup should the wireless run into an issue. We expect to place this solution in production as soon as AZNET completes their work.

*Litigation Support Team* – The Litigation Support Team is continuing to provide intelligent search and trial support tools. Below is a sampling of the work they have completed:

- 152 eDiscovery Jobs Managed
- 42 New Databases Created [13 Concordance, 29 Eclipse]
- 307 Databases Managed [252 Concordance, 55 Eclipse]
- 2.5 TB Incoming data Processed
- 70,984,788 Records Processed
- 57 Classes / CLEs / Support (Litigation Support Applications, eDiscovery, Data Searching, etc.)
  - Assisted legal teams with exhibit preparation and trial presentation support.
  - Excel Hummingbird Links – Created VBA code to walk through all records in multiple sheets within an Excel workbook to create hyperlinks to eDocs documents.
  - Managed a number of Federal DNC Registry Call analysis projects.
  - Key participant in the eDiscovery Committee, rapid response subcommittee, and other eDiscovery activities.
  - Assisted with creation and presentation of Client Agency eDiscovery and ESI training sessions.
  - Setup, trained, and supported Co-counsel with remote access to Eclipse databases.



## 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.

### Overview of Accomplishments

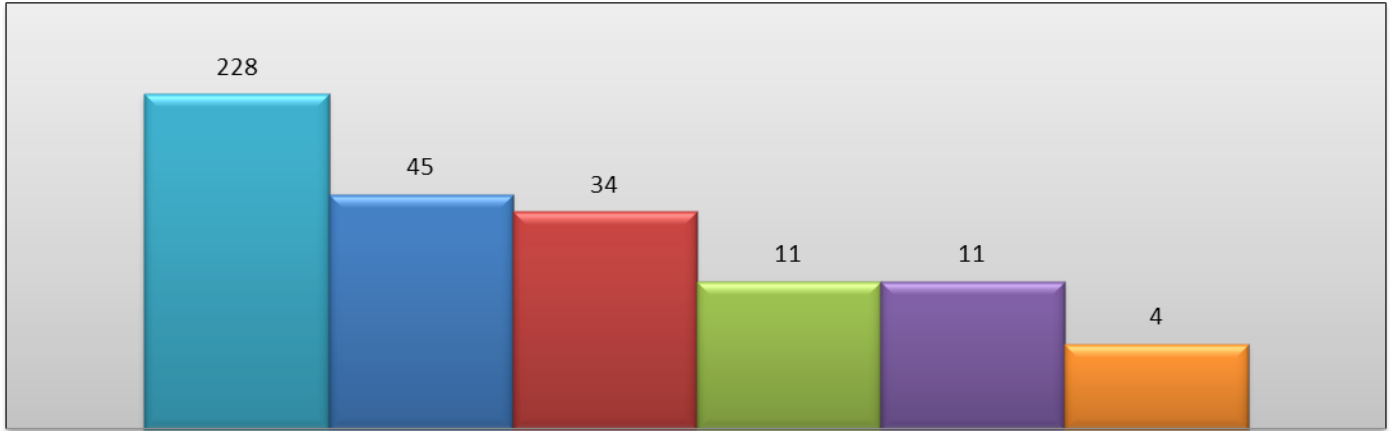
- Annual Employee Awards Event
- Appeals and Constitutional Litigation Division Reorganization
- Background Check Process Improvement
- Benefit Open Enrollment
- EEO Plan
- Merit Incentive Program for FY2019
- New Employee Orientation/IT Training Reorganization
- OSHA Reporting Process Improvement
- Participation in AGO101 CLE training
- PSPRS Cancer Insurance Program for FY2019
- PSPRS DROP Refund Payments
- Public Records Requests
- Record Retention Audit
- Wellness Events/New Partnership with American Red Cross
- Workplace Harassment Training





### Onboarding

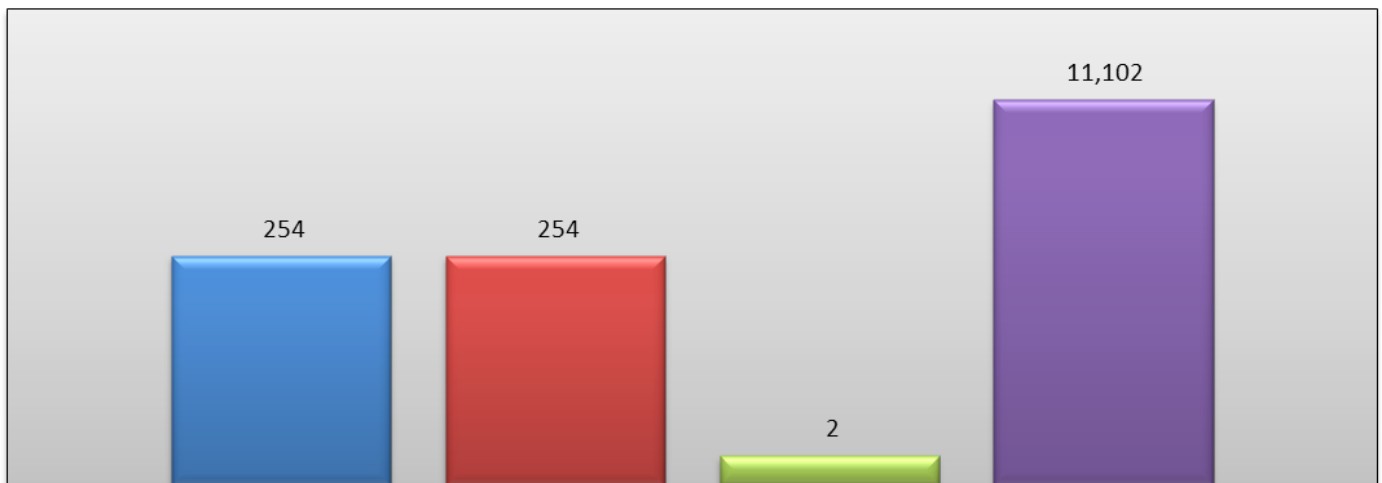
- # of New Employees
- # of Law Externs/Interns
- # of Undergrad Interns
- # of Volunteers
- # of Paid Interns
- # of Temp Employees



FY2019

### Recruitment

- Advertisements Placed
- Hire Lists Processed
- Job Fairs YTD
- Resumes Received to Process



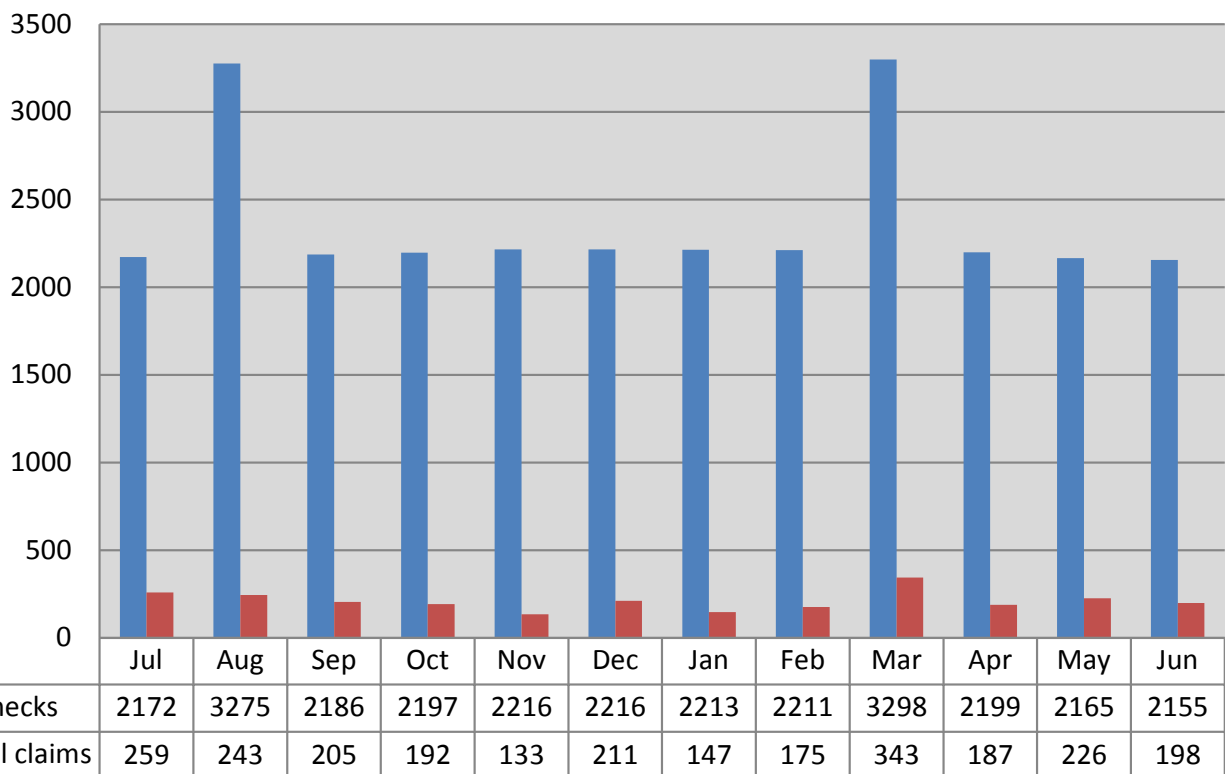
FY2019

## Budget & Finance Section

The Budget and Finance Section is responsible for all agency financial functions including, payroll, accounts payable, general ledger, fixed assets, financial reporting, budget preparation and monitoring and grants management.

- Payroll issued 28,503 paycheck to employees and 2,519 travel & employee reimbursements
- Accounts Payable paid out \$36,822,445 to vendors in FY18
- 1,349 transfers were completed between the AGO and other state Agencies
- 4,445 Deposits processed totaling more than \$49 million dollars.

### FY18 Paychecks Issued and Travel & Employee Reimbursement Processed



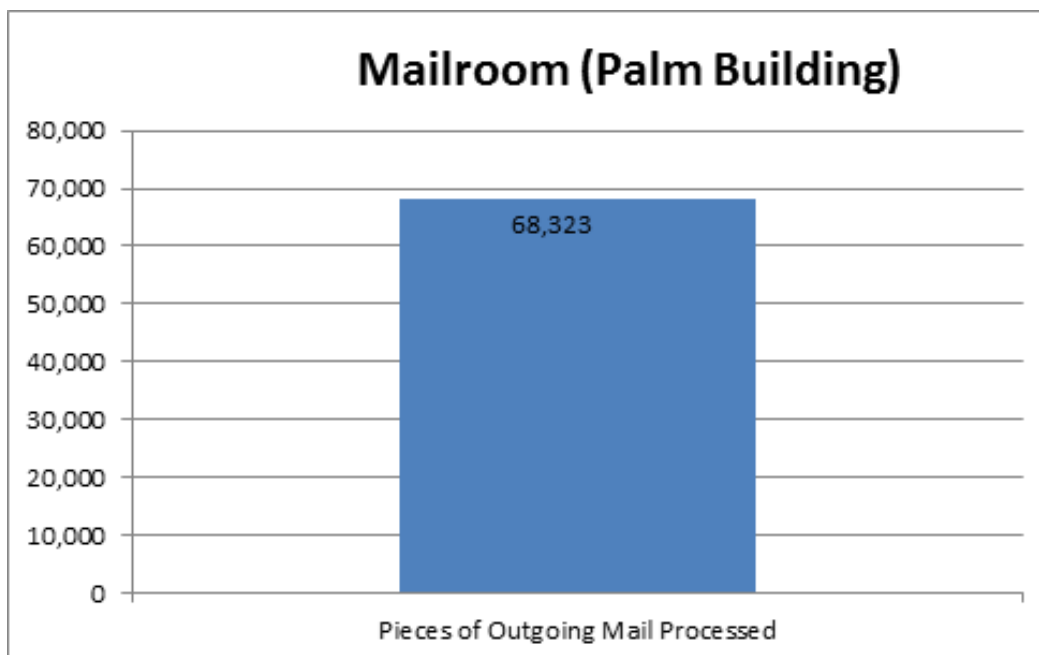
## Facilities Management & Planning Section

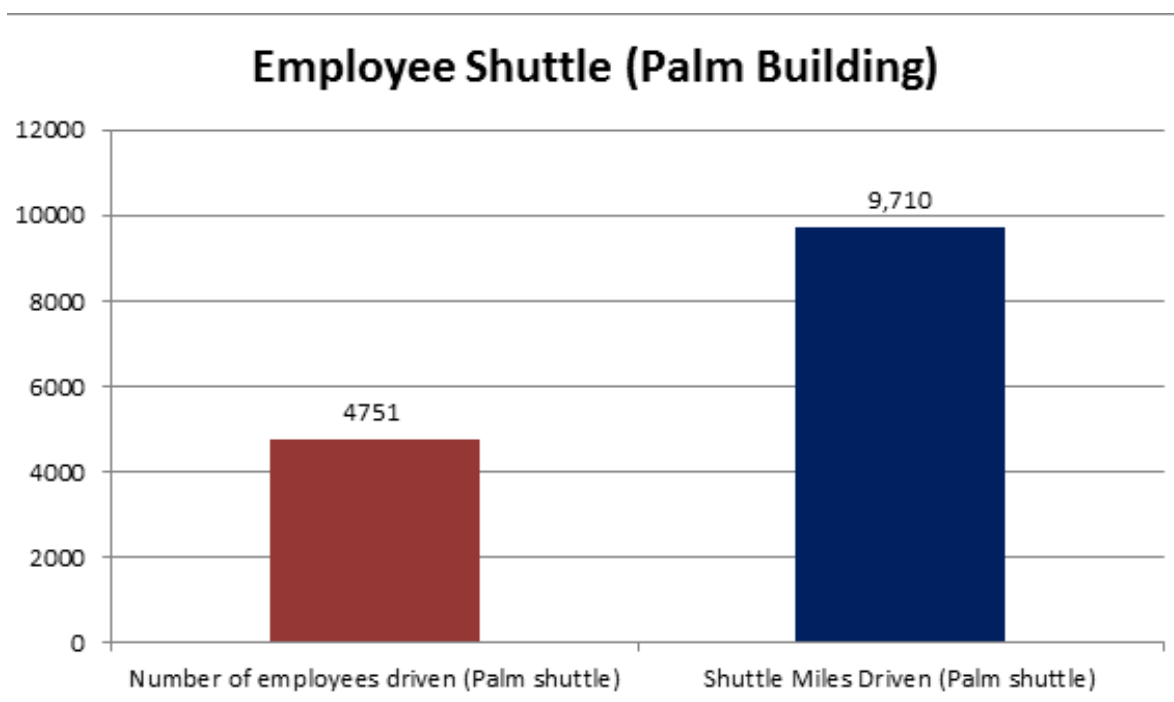
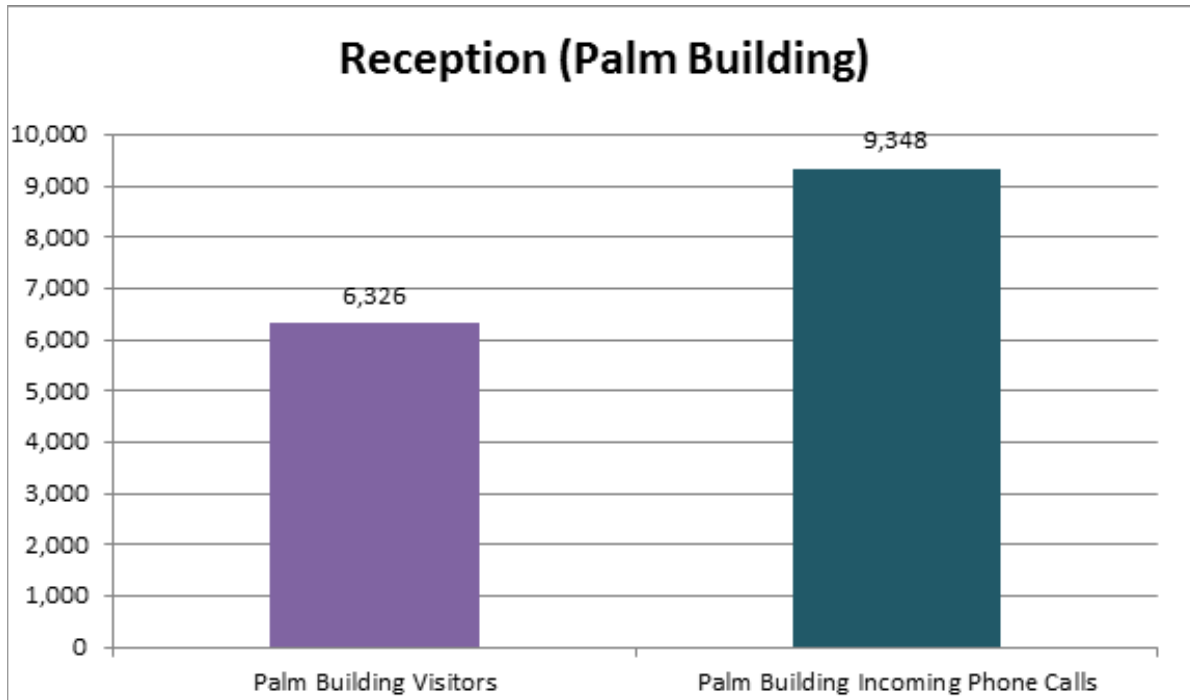
The Facilities Management and Planning Section manages the day-to-day operations and maintenance of the agency's occupied buildings and office spaces. Primary areas of focus include:

- **Daily Operations:** Coordination of maintenance/building renewal, tenant improvement projects, surplus, agency fleet vehicles, parking assignments, employee move/furniture requests and telecommunications service requests across the agency 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, evacuation procedures, and continuation of operations planning, 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 agency.

### 2019 Palm Building Accomplishments

- Relocation of divisions (80 employees) within the Palm Building
- Improved safety and security by hosting a mail/suspicious package training conducted by the postal inspector
- Agency cost savings/increased efficiency in transporting employees to and from court in replacement 12 passenger vehicle



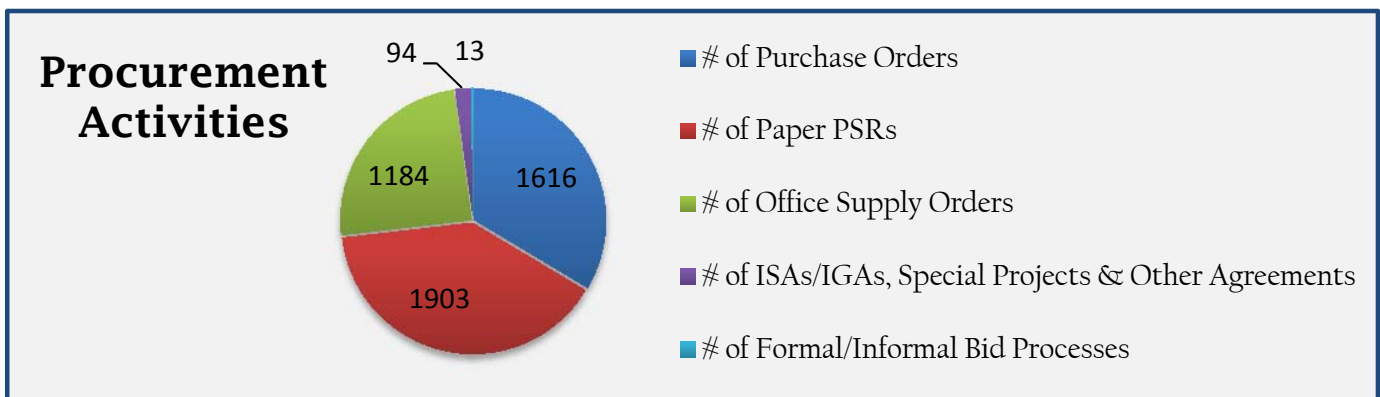


Procurement Section

The Procurement Section (PRS) is responsible for establishing contracts and purchasing goods and services as well as management of contracts for the office. The PRS 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 Include:

- Cellphone Administrator
- P-Card Administrator
- ProcureAZ Administrator
- Office Supply Account Administrator
- Procurement Services:
  - Approve All AGO purchases
  - Facilitate procurement processes for the AGO
  - Create, advertise, evaluate and award all AGO procurement solicitations
  - Review and sign all contracts and agreements for the AGO
  - Post-award contract management.



Overview of Accomplishments

- Solicit and award contracts to hire a fund administrator for the Theranos and Volkswagen Settlement.
- Solicit and award the Outside Counsel Contract for Calendar Year 2018 to approx. 100 firms.
- Solicit and award a supplemental Outside Counsel Contract for CY2018 to approx. 20 firms.
- Solicit and award a contract for Outside Counsel, Consumer Fraud and Related Civil Actions on a Contingency Fee basis to 15 firms.

- Solicit and award contracts to distribute funds to provide education programs for Opioid Misuse/Abuse from Amgen Settlement.
- Negotiate multiple Outside Counsel Agreements to support special needs of other Agencies; including the Arizona Power Authority (9 contracts).
- Negotiate multiple Governmental Agreements to coordinate AGO with Federal, County and City Agencies.
- Participate in design sessions for the new Source to Pay (S2P) e-procurement system: Arizona Procurement Portal (APP). Developed the hierarchy and organizational structure for the AGO within the new APP system.



Division Chief  
Joseph Sciarrotta

## MISSION:

*Protect the public from consumer fraud and provide advocacy and public education regarding consumer protection issues. Ensure that tobacco manufacturers and distributors comply with state laws and enforce the tobacco settlement that benefits state health programs. Protect competition and consumer welfare by enforcing Arizona's antitrust statutes. Promote and enforce Arizona's civil rights laws. Collect debts owed to the State of Arizona efficiently, expeditiously and fairly.*

## Division Summary

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

## Consumer Protection & Advocacy Section

The Consumer Protection & Advocacy Section ("CPA"), with offices in Phoenix and Tucson, protects the public from consumer fraud and educates the public regarding consumer protection issues. CPA contains the (i) Consumer Litigation Unit, (ii) Consumer Information and Complaints Unit, (iii) Antitrust Unit, and (iv) Tobacco Enforcement Unit. CPA handles hundreds of cases and responds to thousands of consumer complaints each year.

### Overview of Accomplishments

- Secured over \$40.82 million in consumer restitution and pre-investigation recoveries, an increase of 42% from FY2018.
- Filed a lawsuit against opioid manufacturer Purdue Pharma, alleging that the company violated a 2007 consent judgment prohibiting it from making deceptive claims when marketing OxyContin.
- Settled for \$9.5 million with a former executive of Insys Therapeutics, a Chandler-based opioid manufacturer that has now admitted to bribing doctors in exchange for opioid prescriptions. The executive agreed to disgorge about \$5 million of bonuses he received while working at Insys.
- As part of a multistate investigation, settled with Uber regarding the company's data breach. Arizona received over \$2.7 million, most of which will be distributed in payments to affected Arizona Uber drivers.
- Helped draft and promote timeshare reform legislation, resulting in the passage of a law that provided greater protections in the future to Arizona timeshare purchasers.
- Pursuant to an existing settlement, assisted hundreds of consumers in relinquishing their timeshares and avoiding paying decades of timeshare fees, saving them an estimated \$25 million.
- Obtained a permanent ban against a moving company owner who had repeatedly violated the Consumer Fraud Act. The owner, Amru Abdalla, is prohibited from ever working in the moving industry in Arizona again.

- Settled a lawsuit for \$190,000 against Phoenix business Pearl Bridal and its owners, resolving allegations that the Defendants took hundreds of thousands of dollars upfront for wedding dresses and failed to provide the dresses as promised, and requiring them to pay full restitution to consumers.
- Settled a lawsuit against WedReel and its owners, resolving allegations that the Defendants took nearly \$170,000 from consumers for wedding videos, but never provided the videos or refunds. Defendants must either provide the videos within a year of the judgment or provide full refunds.
- As part of a multistate investigation, settled with for-profit education company Career Education Corp., resolving allegations of unfair and deceptive recruiting and enrollment practices. Under the settlement, CEC provided hundreds of millions of dollars in loan forgiveness to former students nationwide, including \$22 million to Arizona consumers.
- As part of a multistate investigation, obtained a settlement in which millions in student loan debt for former ITT Tech students will be forgiven. Under the agreement, a lender called Student CU Connect CUSO forgave nearly \$4 million in loans to Arizonans who attended the now-defunct ITT Tech.
- As part of a multistate investigation, settled with Wells Fargo for \$37.1 million, resolving claims that, among other things, Wells Fargo opened millions of unauthorized accounts without consumers' knowledge or consent.
- Members of the Consumer Information & Complaints Unit participated in a phone bank broadcast by ABC15.
- Filed a lawsuit with 43 other states against 20 generic drug manufacturers and 15 senior executives, alleging a broad conspiracy to artificially inflate and manipulate prices, reduce competition, and unreasonably restrain trade for more than 100 different generic drugs.
- As part of a 42-state multistate investigation, negotiated a \$100 million dollar settlement with Citibank, resolving allegations that Citibank engaged in fraudulent and anticompetitive conduct involving the manipulation of the U.S. Dollar LIBOR. Arizona entities recovered \$2.24 million in restitution as a result of the settlement.

## Consumer Litigation Unit

### Healthcare

#### *Lawsuit filed against Purdue Pharma*

The AGO filed a lawsuit against opioid manufacturer Purdue Pharma, alleging that the company violated a 2007 consent judgment prohibiting Purdue from making deceptive claims when marketing OxyContin and requiring Purdue to provide balanced information about OxyContin, including disclosing the risk of abuse, addiction, and physical dependence associated with using the drug.

#### *\$9.5 million settlement with former VP of Insys*

The AGO settled with a former executive of Insys Therapeutics, a Chandler-based opioid manufacturer that has now admitted to bribing doctors in exchange for opioid prescriptions. Under the consent judgment, the executive admitted wrongdoing and agreed to a \$9.5 million settlement, including about \$5 million of bonuses he received while working at Insys.



## *\$2.4 million settlement regarding Johnson & Johnson hip implants*

After a multistate investigation, the AGO filed a consent judgment resolving claims against DePuy Orthopedics and its parent company Johnson & Johnson related to misleading claims as to the longevity of metal-on-metal hip implants. The settlement required DePuy to abide by injunctive terms and pay \$2.4 million to Arizona.

## **Data Breach**

### *\$2.7 million settlement with Uber over data breach*

After a multistate investigation, the AGO settled with Uber regarding a data breach affecting Uber's drivers. Under the settlement, Arizona received over \$2.7 million, most of which will be distributed in payments to affected Arizona Uber drivers.

### *\$150,000 settlement with Premera Blue Cross over data breach*

After a multistate investigation, the AGO settled data breach-related claims with Premera Blue Cross. Premera agreed to pay over \$150,000 to Arizona and also agreed to implement stronger data protection in the future.

### *\$50,000 settlement in first-ever multistate HIPAA-related data breach lawsuit*

After a multistate investigation, the AGO settled data breach-related claims with healthcare software providers Medical Informatics Engineering Inc. and NoMoreClipboard to resolve allegations that those providers had failed to implement basic security measures to prevent such a breach. The providers agreed to pay \$50,000 to Arizona and also agreed to implement stronger data protection in the future.

## **Do Not Call**

### *\$150,000 settlement with Orangutan Home Services over Do Not Call violations*

The AGO reached a \$150,000 settlement with Orangutan Home Services over thousands of sales calls to phone numbers on the Do Not Call list.

### *AGO participates in nationwide crackdown on illegal robocalls*

The Federal Trade Commission (FTC), the Arizona AGO, and other nationwide law enforcement partners announced a major crackdown on illegal robocalls. As part of the crackdown, the law enforcement partners collectively brought 94 different actions targeting operations around the country that were responsible for more than one billion calls pitching a variety of products and services. The joint crackdown, "Operation Call It Quits," is part of the FTC's ongoing effort to help stem the tide of pre-recorded telemarketing calls.

## Auto

### *\$5 million of restitution distributed in General Motors settlement*

Distributed over \$5 million in GM restitution checks to over 13,000 eligible Arizona consumers. The checks originated from a settlement regarding defects in GM vehicles, including ignition-switch defects that resulted in vehicles switching off while consumers were driving.

### *\$10 million of restitution distributed in Volkswagen settlement*

Through a claims administrator, the AGO distributed around \$10 million in VW restitution checks to approximately 10,000 consumers. The checks originated from a settlement regarding the sale of “clean diesel” cars that contained defeat devices to cheat emissions tests.

### *Lawsuit filed against Mercedes-Benz and Daimler*

The AGO filed a consumer fraud lawsuit against Mercedes-Benz USA, LLC and its parent, Daimler AG for allegedly defrauding Arizonans through the sales of “clean diesel” cars for which it allegedly used defeat devices to cheat emissions tests.

### *\$4 million settlement with Bosch and Fiat Chrysler*

After a multistate investigation, the AGO settled with Fiat Chrysler and auto supplier Bosch for approximately \$4 million, resolving allegations that the companies installed emission defeat devices in vehicles marketed as “clean-burning.” As part of the settlement, over 2,500 Arizonans may receive \$1,000 each.

### *\$2.25 million verdict against Phoenix Car Rental survives post-trial motions and appeals*

After a six-week trial in 2017, the AGO obtained a \$2.25 million consumer fraud judgment against Dennis Saban, James Spadafore, and their business, Phoenix Car Rental. The Court found that the defendants had engaged in practices of quoting inaccurate prices, charging hidden fees, and renting unsafe cars. In FY2019, Defendants filed multiple post-trial motions challenging the judgment, but all of the motions were denied. Defendants also filed an appeal related to the judgment, but the appeal was dismissed.

### *Over \$125,000 in restitution distributed to ABC Nissan customers*

The AGO distributed over \$125,000 in restitution to ABC Nissan customers. The restitution arose from a settlement of AGO claims that ABC Nissan had engaged in false advertising and falsification of loan documents.

## Timeshares

### *Timeshare legislation increases protections for consumers*

The AGO helped draft and promote timeshare reform legislation, resulting in the passage of a law that provided greater protections in the future to timeshare purchasers in Arizona.

### *AGO announces \$25 million in estimated consumer savings through timeshare settlement*

The AGO facilitated an estimated \$25 million in consumer savings through a previous settlement with Diamond Resorts, wherein hundreds of consumers were able to relinquish their timeshares and avoid paying decades of timeshare fees.

### *AGO warns of Mexican timeshare resale scam*

The AGO issued a consumer advisory related to a recent spike in timeshare resale scams for timeshares located in Mexico. In the scam, consumers are tricked into believing that someone wants to buy their Mexican timeshare. Consumers are told that in order to sell the timeshare, the consumer must first pay various fees, taxes, or “escrow” payments. The scammer continues to collect money from consumers until the consumer runs out of money or realizes that he or she has been scammed.

## Services

### *\$195,000 judgment obtained against runaway landscaper*

The AGO obtained a \$195,000 judgment against Brent Ford. In the judgment, the court found that Ford had collected about \$90,000 in up-front payments from consumers for landscaping services, and then disappeared without providing the promised services. The judgment also bans Ford from engaging in the business of landscaping construction in Arizona.

### *\$190,000 settlement with Pearl Bridal*

The AGO settled a lawsuit against Pearl Bridal and its owners, resolving allegations that the Defendants took hundreds of thousands of dollars upfront for wedding dresses and failed to provide the dresses as promised. The consent judgment required Defendants to pay \$100,000 in civil penalties, and \$90,000 to refund fully the consumers who were not already able to get a refund from their credit card company.

### *\$190,000 settlement with WedReel*

The AGO settled a lawsuit against WedReel and its owners, resolving allegations that the Defendants took nearly \$170,000 from consumers for wedding videos, but never provided the videos or refunds. Defendants must either provide the videos within a year of the judgment or provide full refunds.

## *Permanent ban obtained against repeat offender in moving fraud case*

The AGO obtained a permanent ban against a moving company owner who had repeatedly violated the Consumer Fraud Act. The owner, Amru Abdalla, is prohibited from ever working in the moving industry in Arizona again.

## *\$450,000 judgment obtained against Senior Grad Trips*

The AGO obtained a \$450,000 judgment against a Texas-based travel company, EB Worldwide, and its CEO, George Barragan. In the judgment, the Court found that EB Worldwide collected \$40,000 from Tucson high school students for a Disneyland senior class trip, but never provided the trip. The judgment also permanently bans EB Worldwide and Barragan from selling or advertising vacation packages in Arizona.

## **Charity**

### *\$2.5 million recovered from sham cancer charity will go to real cancer charities*

As part of a previous multistate lawsuit and settlement, a receiver liquidated the sham cancer charity Cancer Fund of America. The Arizona AGO was an executive committee member of the multistate, which negotiated a plan approved by the U.S. District Court for the District of Arizona to send \$2.5 million of the remaining funds to real cancer charities around the country.

## **Education**

### *\$22 million in student loans forgiven for Arizona students in Career Education Corp. settlement*

The AGO filed an assurance of discontinuance resolving a multistate investigation of unfair and deceptive recruiting and enrollment practices by for-profit education company Career Education Corp. and its related entities. Under the settlement, CEC provided hundreds of millions of dollars in loan forgiveness to former students nationwide, including \$22 million to Arizona consumers.

### *Nearly \$4 million in student loans forgiven for Arizona students in ITT Tech-related settlement*

After a multistate investigation, the AGO obtained a settlement in which millions in student loan debt for former ITT Tech students will be forgiven. Under the agreement, a lender called Student CU Connect CUSO forgave nearly \$4 million in loans to Arizonans who attended the now-defunct ITT Tech.

## **Business Opportunities**

### *\$460,000 judgment obtained against business opportunity seller*

After a successful motion for summary judgment, the AGO obtained a judgment for about \$460,000 against

Wealth Network Solutions and its principal, Justin Rahn, resolving claims that Rahn and his business collected over \$135,000 from consumers in exchange for worthless “business opportunity” products and services. The AGO also obtained and distributed \$100,000 to consumers from a bond that had been issued to WNS by a third party.

*Up to \$265,000 in restitution obtained from business opportunity seller*

The AGO filed a consent judgment resolving claims against Charles Richard Montoya Mayville, the owner of business opportunity seller Alternative Online Design. The consent judgment requires Mayville to pay up to \$265,000 in restitution and bans Mayville from selling any business opportunity in Arizona for 20 years.

## Small Business Scams

*Over \$400,000 in restitution secured in “toner pirate” case*

After a lawsuit, the AGO filed a consent judgment against Premiere Office Supplies LLC, its owner, and affiliated entities, resolving allegations that the Defendants ran a “toner pirate” scam that sent fake toner cartridge invoices to churches, schools, and businesses. The consent judgment requires Defendants to pay \$419,640 in restitution to refund fully all businesses that responded to the invoices.

## Financial Services

*\$37.1 million settlement with Wells Fargo*

After a multistate investigation, the AGO settled with Wells Fargo for \$37.1 million, resolving claims that, among other things, Wells Fargo opened millions of unauthorized accounts without consumers’ knowledge or consent.

*Lawsuit filed against CashCall*

The AGO filed a lawsuit against CashCall, its owner, J. Paul Reddam, and a wholly owned subsidiary, WS Funding LLC, alleging that CashCall unlawfully collected tens of millions of dollars from Arizona consumers through a lending scheme. The scheme featured interest ranging from an annual rate of 89% to 169%, greatly exceeding that allowed under Arizona law.

## Debt Collection

*\$1 million in debt relief secured for Arizonans*

After a multistate investigation, the AGO reached a settlement with Encore Capital Group and its subsidiaries Midland Credit Management and Midland Funding. The companies were alleged to have pursued consumers for discharged or time-barred debts and to have submitted unverified information in litigation.

## Events/Conferences/Entertainment

### *AGO warns consumers about fake events*

Consumers paid for a “Crab and Lobster Feast” that was scheduled to be held in Phoenix but never occurred. Through the AGO’s investigation of this matter, the AGO discovered many more events in Arizona and elsewhere that were linked to the same organizer. The AGO warned consumers about those events and worked with ticket-selling websites to stop consumers from losing additional money.

### *AGO warns consumers about fake conference*

The AGO warned consumers that a scheduled “Women’s EmpoweredUp Conference” that was supposed to feature Michelle Obama and Angela Ducey was a scam. As predicted, the conference never took place and the supposed guests confirmed that they had never agreed to appear.

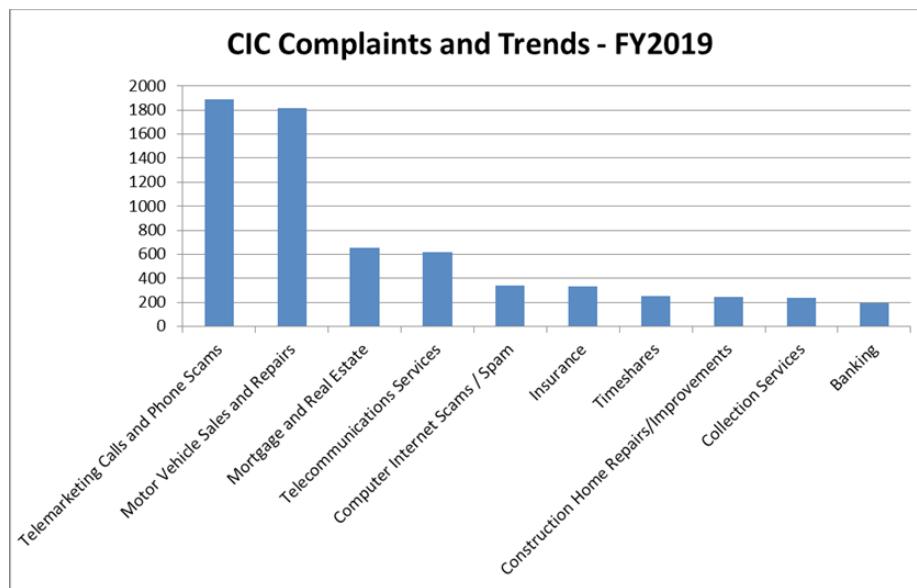
### *\$1 million settlement with merchandiser game machine company*

The AGO reached a \$1 million settlement with a merchandiser game machine company, resolving allegations that the company had sold rigged merchandiser machines that could be set to prevent players from winning prizes until players had lost hundreds of dollars.

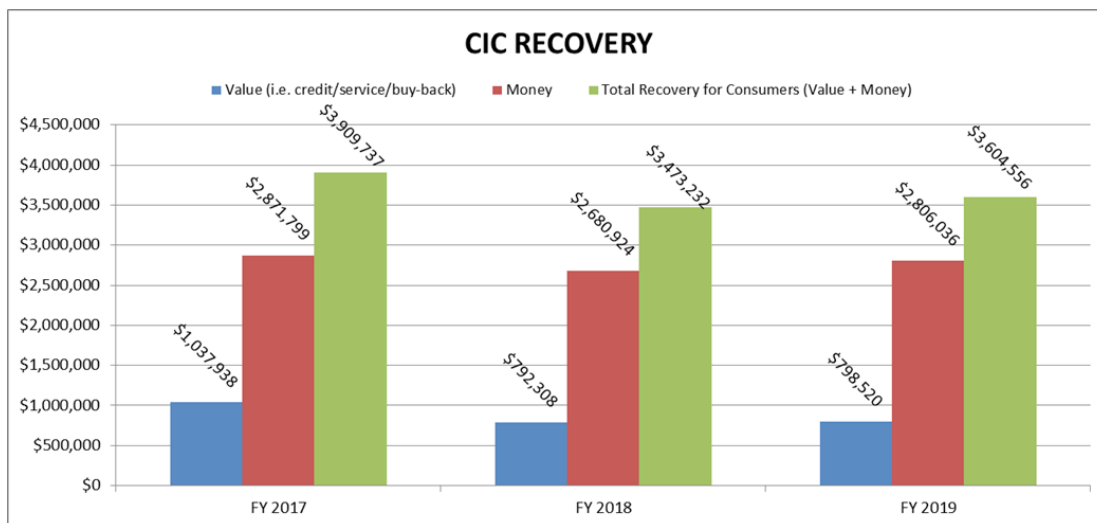
**Consumer Information & Complaints Unit**

The Consumer Information & Complaints Unit (“CIC”) conciliates consumer complaints and works to obtain recovery (i.e., pre-investigation recoveries) for consumers whenever possible. CIC received over 12,622 consumer complaints in fiscal year 2019. CIC staff, most of whom are bilingual in Spanish and English, answered more than 40,900 consumer phone calls throughout the year and responded to 15,140 consumer emails.

Common consumer complaint areas this year include the following:



In FY2019, CIC recovered over \$3.6 million for consumers throughout Arizona.



Consumers may file complaints online at [www.azag.gov](http://www.azag.gov) (go to “Consumer,” then “File a Complaint”), 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].

## Antitrust Unit

### *\$100 million settlement with Citibank*

After a multistate investigation, the Arizona AGO and 41 other states negotiated a \$100 million dollar settlement with Citibank, resolving allegations that Citibank engaged in fraudulent and anticompetitive conduct involving the manipulation of the U.S. Dollar LIBOR (the “London Interbank Offered Rate”). Arizona entities recovered \$2.24 million in restitution as a result of the settlement.

### *\$280,000 settlement with dental distributors*

The AGO reached a settlement with Patterson Dental Supply Company for \$100,000 and injunctive terms requiring comprehensive antitrust training. The AGO’s investigation related to Patterson’s alleged conspiracy with competitors to prevent entry of SourceOne Dental, a low cost, online sales platform of dental supplies, into the market. The AGO also filed a lawsuit against Benco Dental Supply Company for the same alleged conduct and ultimately settled for \$180,000 and similar, comprehensive injunctive terms.

### *Lawsuit filed against generic drug manufacturers*

After a multistate investigation, the Arizona AGO filed a lawsuit with 43 other states against 20 generic drug manufacturers and 15 senior executives. The lawsuit alleges a broad conspiracy among the nation’s largest generic drug manufacturers to artificially inflate and manipulate prices, reduce competition, and unreasonably restrain trade for more than 100 different generic drugs.

## 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 2019, Arizona received approximately \$100 million in total MSA payments. Since 1998, tobacco manufacturers have paid approximately \$2.0 billion to the State.

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 FY2019 include the following:

### **Youth Tobacco Program**

TEU continued to successfully operate the Youth Tobacco Program in fiscal year 2019. 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 FY2019, the program performed 2,157 undercover inspections of tobacco retailers, resulting in 551 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, an offense with a potential fine of \$300. The business may also be fined up to \$1000 per offense. Over 35,000 retail inspections have been performed since the program's inception in 2002. TEU works closely with County Attorney's Offices, Justice Courts, and health departments to implement and maintain the Arizona Retail Tobacco Training class and diversion program. Over the last four years, businesses and individual clerks have been increasingly utilizing the class to become more educated about tobacco laws.

After achieving record low fail rates of 11.6% in FY2017 and 9.8% in FY2018, the fail rate for FY2019 increased to 13.3%. TEU attributes the increase in failed inspections primarily to the sale of e-cigarettes to minors. During routine youth tobacco inspections, TEU has found that retailers are more likely to violate the prohibition on sales of tobacco products to minors when the youth volunteer requests an e-cigarette as opposed to cigarettes or other conventional tobacco products.

## **Enforcing Ban Against Online Tobacco Sales**

Arizona law prohibits tobacco companies from selling cigarettes and roll-your-own tobacco products online, and in FY2019 TEU continued to pioneer a new enforcement process. By conducting undercover purchases online and determining whether those sales complied with federal interstate delivery reporting requirements, TEU identified numerous 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 companies from selling tobacco anywhere in the country. During FY2019, TEU nominated 183 websites and associated entities to the ATF non-compliant list, more than any other state combined. TEU worked closely with eBay to remove approximately 2,000 cigarette sale offers available to Arizona consumers. TEU also worked closely with credit card companies to identify and take appropriate action against merchants that sell tobacco products online in violation of Arizona law. Finally, TEU identified approximately 30 websites selling whole leaf tobacco in violation of the delivery sales ban, and successfully persuaded all but one to cease sales into Arizona. As a result of these efforts, dozens of websites have stopped offering to sell cigarettes, roll-your-own, or whole leaf tobacco to Arizona consumers.

## **Enforcing the Escrow and Directory Statutes**

State law requires any tobacco product manufacturer selling cigarettes to Arizona consumers to either (1) join the 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, 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, TEU initiates litigation to obtain compliance. TEU is also assisting the Arizona Department of Revenue ("ADOR") with tobacco tax enforcement issues that relate to and enhance the enforcement of the escrow statute. TEU has again worked diligently to ensure compliance with the Escrow Statute.

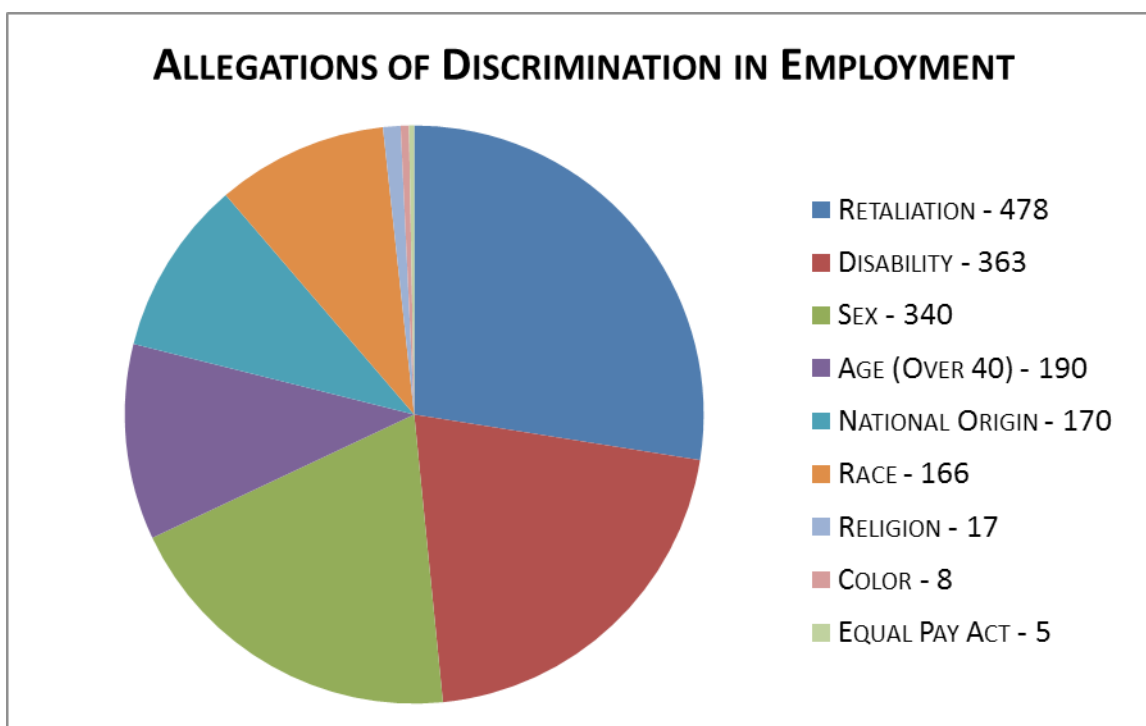
TEU also enforces the Directory Statute, pursuant to which the Attorney General's Office publishes on its website

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. 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

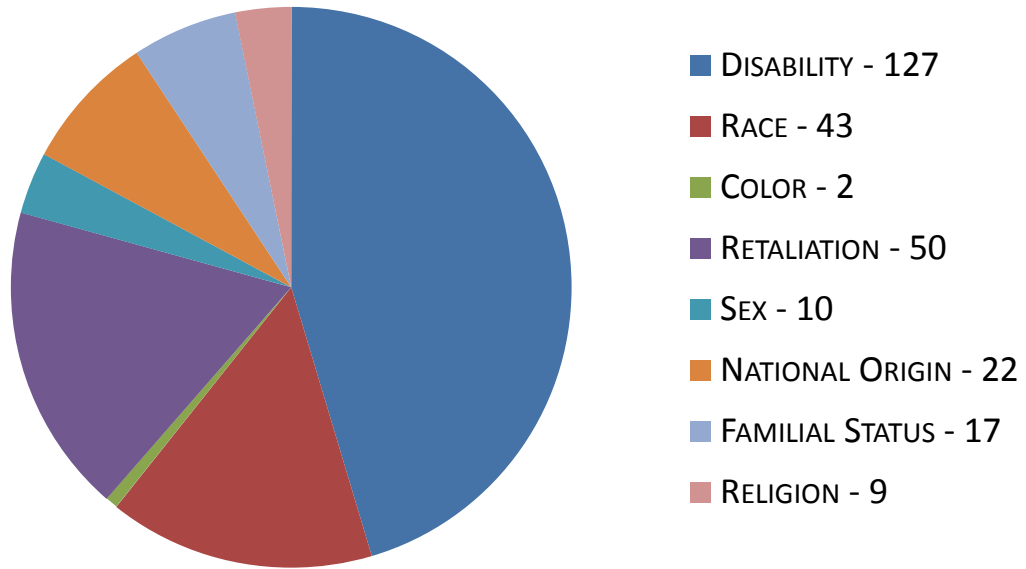
The Division of Civil Rights Section (“DCRS”) enforces the Arizona Civil Rights Act (“ACRA”). ACRA prohibits discrimination in employment, housing, public accommodations, and voting. The DCRS investigates, mediates, and litigates complaints alleging violations of ACRA and seeks to reduce discriminatory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

Arizonans can file charges with the DCRS online, by phone, mail, or in person. In FY2019, the DCRS investigated 2,153<sup>2</sup> charges alleging the following types of discrimination:

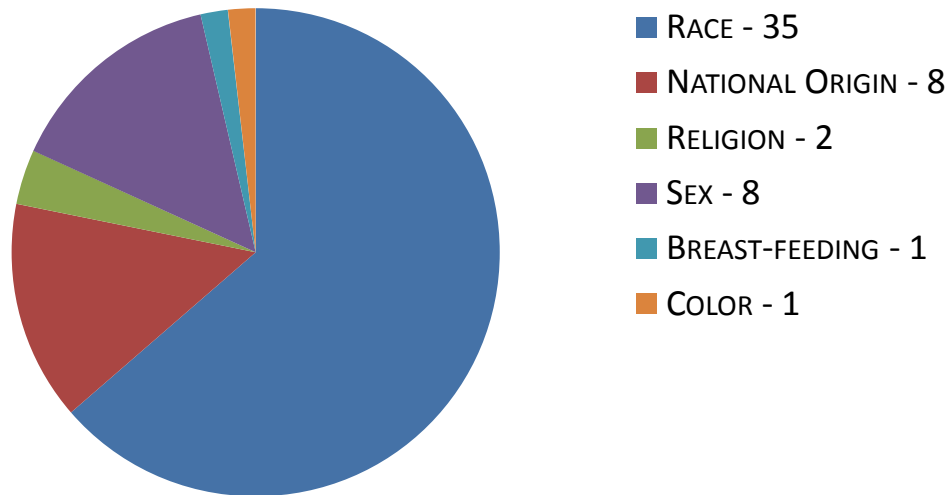


<sup>2</sup> The DCRS investigated a total of 1,373 cases in FY2019. A case can include multiple charges of discrimination.

### ALLEGATIONS OF DISCRIMINATION IN HOUSING



### ALLEGATIONS OF DISCRIMINATION BY A PUBLIC ACCOMMODATION



#### Allegations of Discrimination under the Arizonans with Disability Act

Disability cases – 81

## Dispute Resolutions

Where possible, the DCRS seeks to resolve disputes through various forms of conflict resolution. In FY2019, the DCRS resolved 170 charges of discrimination through mediation, conciliation, or litigation settlements. As a result of these efforts, the DCRS obtained a total of \$1,006,286.00 in monetary relief for Charging Parties, future monitoring and enforcement activities, and a wide variety of injunctive relief to prevent future civil rights violations.

## Highlights of Cases Investigated, Litigated or Resolved by the DCRS

*State v. TBM Equities, LLC d/b/a Sahara Apartments* – DCRS brought a charge of housing discrimination against Sahara Apartments after viewing an example lease agreement on the complex’s website. A portion of the lease agreement read: “If you are female and become pregnant while you are a resident of Sahara Apartments, you must vacate the apartment upon or prior to the birth of your child and pay any unpaid balance of your Contract Price.” DCRS alleged that Sahara Apartments discriminated based on familial status and sex in violation of the Arizona Fair Housing Act. The case settled through a Conciliation Agreement. In the Conciliation Agreement, Sahara Apartments, in addition to other injunctive relief, (i) was assessed a civil penalty, (ii) agreed to create a policy that prohibits discrimination and retaliation per the Arizona Fair Housing Act, (iii) shall provide written notice to all current tenants that the offending paragraph is void and no longer in effect, (iv) shall ensure that the offending language will not be included in new leases, and (v) is required to have all managers attend fair housing discrimination training.

*State v. Sunburst Farms Irrigation District* – DCRS alleges that the employer failed to prevent a sex-based hostile work environment. Because of the employee’s sex, her coworker subjected her to unwelcome conduct of a sexually harassing nature that was sufficiently severe or pervasive that it altered the terms and conditions of her employment. The female employee reported her co-worker’s comments and his behavior to the Board of Directors, but the Board failed to take prompt and remedial action to prevent the co-worker from engaging in the sexual harassment. The case is pending in Maricopa County Superior Court.

*State v. Big Tex Trailer World, Inc. d/b/a Big Tex Trailers* – In this employment case involving disability discrimination, the employer denied an employee a reasonable accommodation for his disability and discharged him because of his disability. The employee had hip replacement surgery which required medical leave and required the use of a cane for ambulation. The employer refused to allow the employee to return to work with the use of a cane as a reasonable accommodation for his disability. The employee informed the employer that he could not travel out of state for training due to his disability which culminated in the employer terminating the employee based on his disability. The case is pending in Pima County Superior Court.

*State v. Harmony Gardens, LLC* – In this employment case involving sex discrimination, the employer failed to take prompt and remedial measures to remedy the harassment of an employee by a patient who lived in the care facility. The patient subjected the female employee to unwelcome conduct of a sexually harassing nature that was sufficiently severe or pervasive as to change the terms or conditions of her employment by creating a hostile work environment. The patient solicited sex from the employee, made sexually offensive comments, and physically groped her, creating a hostile work environment. The case is pending in Maricopa County Superior Court.

*State v. Rumors Sports Bar & Grill, LLC* – In two employment cases involving sex discrimination, an owner/supervisor subjected two female bartenders to unwelcome verbal and physical conduct of a harassing nature. The harassing conduct was sufficiently severe or pervasive that it altered the terms and conditions of employment for both female employees. Defendant owner made sexually explicit comments while intoxicated on a daily basis, propositioned one female bartender for dates on multiple occasions, physically groped one female bartender on multiple occasions, and physically groped the other on one occasion. The sexual harassment culminated in termination for both female employees. The State settled the lawsuit with a Consent Decree that included monetary damages to the employees for back pay with injunctive relief to help prevent future civil rights violations.

*State v. Sparky's Investments, LLC* – In this employment case involving sex discrimination, an owner/supervisor subjected the sole, female employee to unwelcome verbal and physical conduct of a harassing nature. The harassing conduct was sufficiently severe and pervasive that it altered the terms and conditions of her employment, with weekly sexually offensive comments, text messages, and physical touching, creating a hostile work environment. Defendant touched the female employee's back, hips, and smacked her buttocks, viewed a pornographic video at work in her presence, and responded to her text messages with sexually-explicit comments and propositions. The State settled the lawsuit with a Consent Decree that included monetary damages to the employee for back pay with injunctive relief to help prevent future civil rights violations.

*State v. Northwest Medical Center* – In this employment case involving disability discrimination, the employer denied an employee's request for a reasonable accommodation of medical leave to allow the disabled employee time to recover from surgery, and instead terminated the employee's employment. The State settled the lawsuit with a Consent Decree that included monetary damages to the employee for back pay with injunctive relief to help prevent future civil rights violations.

*State v. Smith's Food and Drug Centers* – In this employment case involving disability discrimination, the employer denied an employee a reasonable accommodation for her disability and retaliated against her. The employee had a mobility impairment which required her to use a cane and a stool while at work. Her employer denied her the accommodation, and when she was unable to return to work without her requested accommodation she was terminated. The State settled the lawsuit with a Consent Decree that included monetary damages to the employee for back pay with injunctive relief to help prevent future civil rights violations.

## Outreach and Education

In addition to its investigation and enforcement activities, DCRS participated in or sponsored 20 education and outreach events to inform the community about civil rights laws and the DCRS complaint and resolution process.

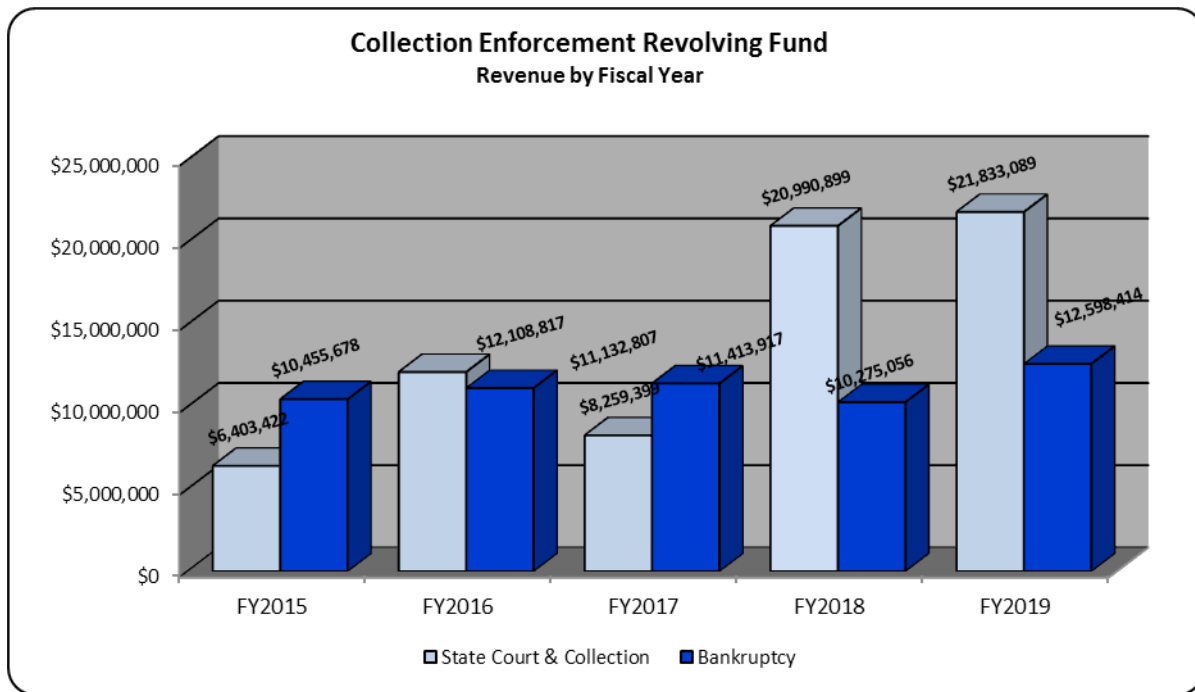
## Bankruptcy & Collection Enforcement Section

The Bankruptcy and Collection Enforcement Section (“BCE”) comprised of the Bankruptcy Unit, Collection Enforcement Unit and State Court Unit, is a cross functional team of attorneys, legal staff and debt collection professionals. BCE’s mission is to collect debts owed to the State of Arizona, efficiently, expeditiously and fairly in order to maximize revenue.

BCE represents nearly all state agencies, boards, commissions and departments in bankruptcy, state court collection litigation and other collection matters. BCE’s responsibilities range from routine collection and bankruptcy matters to complex litigation.

### Accomplishments

In FY2019, BCE collected approximately \$34.4 million dollars on behalf of the state. This was another record year for BCE and a 10% increase over its last record year from FY2018 of \$31.3 million. BCE has continued to focus on its agency relationships resulting in increased case referrals. Continued improvements in BCE operations have steadily increased revenues as a result of increased debt collection benefiting both the Attorney General’s Office and the State of Arizona.



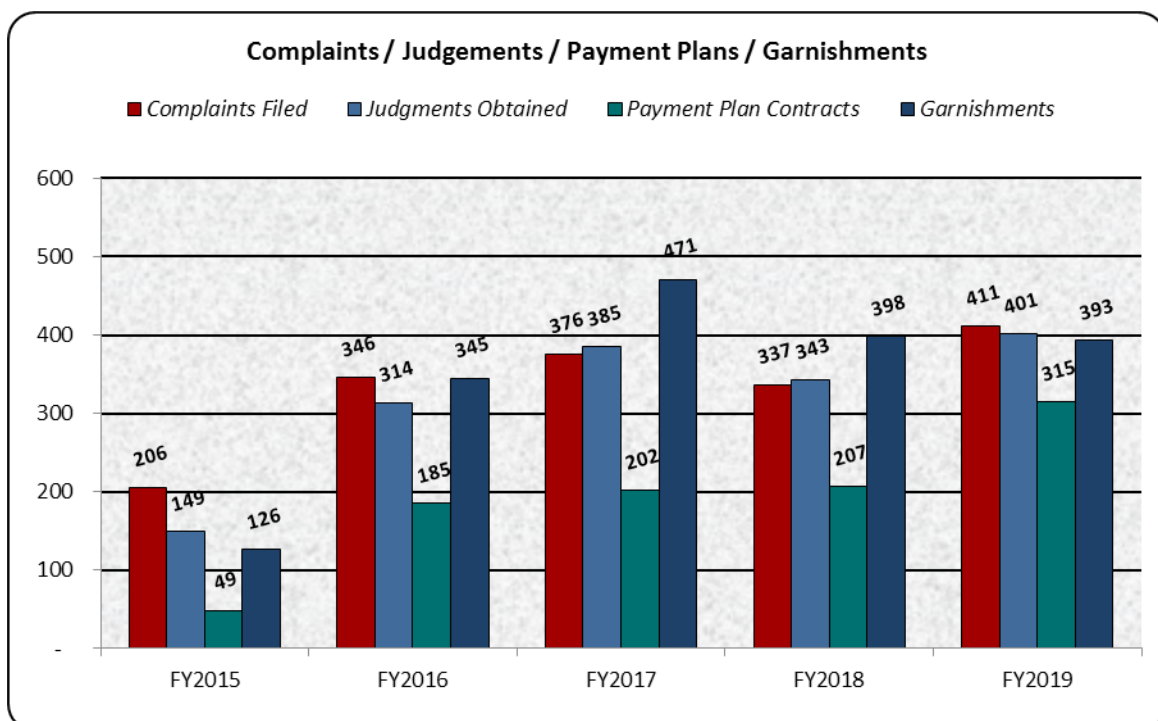
BCE has continued to produce at the increased levels in the form of complaints filed, judgments obtained, payment plan contracts, and garnishments. In FY2015, BCE filed 206 Complaints. In FY2016 that was increased to 346. In FY2017, it filed 376, an 83% increase over FY2015. In FY2018 it filed 337 and in FY2019, it filed 411, a record number of Complaints, almost doubling its output in FY2015.

In FY2015, BCE obtained 149 judgments. In FY2016 that was increased to 314. In FY2017, it obtained 385, a 158% increase over FY2015. In FY2018 it obtained 343 judgments and in FY2019, it obtained a record 401 judgments, a 169% increase over its output in FY2015.

In FY2015, BCE entered into 49 payment agreements. In FY2016, that number increased to 185 and 202 in FY2017, a 312% increase over FY2015. In FY2018 it entered into 207 payment agreements and in FY2019, it entered into a record 315, a 543% increase from FY2015.

The same trend has occurred in garnishments. In FY2015, BCE filed 126 garnishments. In FY2016, BCE increased that to 345 garnishments and 471 in FY2017, a 274% increase over FY2015. In FY2018 it filed 398 garnishments and in FY2019 it filed 393, a 212% increase over FY2015.

These consistent increases in directed collection activity have resulted in significant increases in collection dollars and have paved the way for continued increases in the years to come.





# Child and Family Protection Division



Division Chief John Johnson

## MISSION:

To provide the Arizona Department of Economic Security (DES) 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 DES and DCS with more than 435 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 DES and DCS in the Arizona Court of Appeals, the Arizona Supreme Court, and the Federal Courts. The Appellate Practice Group prevails in an overwhelming majority of all resolved appeals.

## Protective Services Section

PSS provides comprehensive legal representation to DCS. PSS shares DCS's goals of protecting abused and neglected children, providing services to preserve families, and achieving timely permanency for Arizona's children in foster care. PSS has 276.20 full time equivalent positions, 154.45 attorneys and 121.75 support staff. PSS attorneys and staff provide legal representation to DCS throughout Arizona's 15 counties.

### Trial Practice

PSS attorneys statewide engage in a high-volume, fast-paced, litigation-focused practice in the Juvenile Division of the Arizona Superior Courts. PSS trial attorneys 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 in an effort 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, or 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. PSS provides intensive training to newly incoming and experienced attorneys including a four-week training, a 90-day follow-up training, several trial colleges, and a three-day, statewide PSS Summer Continuing Legal Education Conference. PSS also utilizes mentors to support PSS attorneys and to assist with chairing trials, litigating high-profile cases, and working directly with the client. In addition, PSS provides substantive and ongoing training to DCS caseworkers, supervisors, and members of the judiciary throughout Arizona.

## PSS Appeals

The CFPD Appeals Unit regularly appears before the Arizona Court of Appeals and the Arizona Supreme Court to defend and/or challenge trial court decisions and to file and respond to appeals and special actions arising from dependency, guardianship and termination matters. In FY2019, the Appeals Unit filed over 290 briefs on behalf of PSS—including six petitions for special action—in addition to numerous substantive motions and research and writing projects for PSS trial attorneys. The Supreme Court and Court of Appeals issued twelve opinions and over 200 memorandum decisions in FY2019, in cases that were briefed by the Appeals Unit.

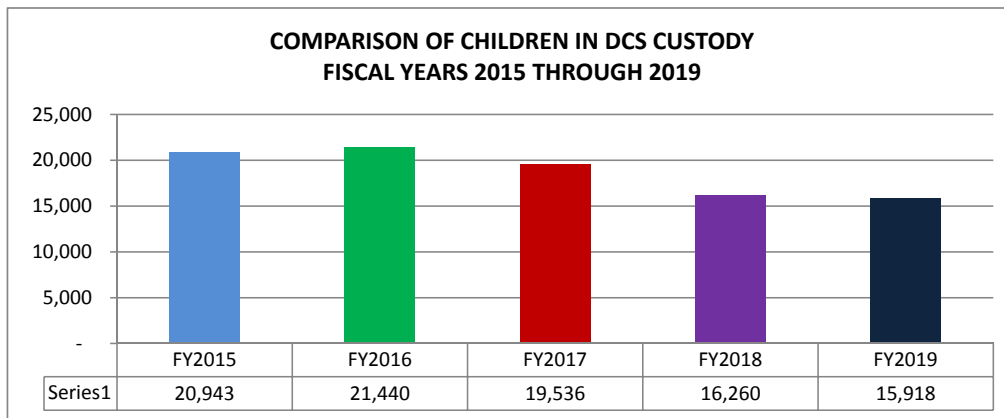
In addition to the items listed above, the Appeals Unit assists PSS by:

- PSS coordinated with the courts and DCS in the successful creation and implementation of the Court Authorized Removal (CAR) Process.
- PSS attorneys attended 71,672 court hearings on behalf of DCS.
- PSS attorneys represented DCS in trials a total of 6,982 days in FY2019.
- PSS trained 39 new attorneys during FY2019.
- PSS trained an average of 90 new case managers statewide every month and 150 new DCS supervisors. PSS also provided training in conjunction with DCS's Advanced Investigator Academy.
- PSS conducted a Basics Skills Trial College and an Intermediate/Advanced Trial College for PSS attorneys.
- PSS held a statewide, three-day Summer CLE Conference for approximately 140 attorneys focusing on child safety and trial practice skills.
- PSS assisted DCS in protecting the 15,918 children in care from abuse and neglect during FY2019.
- PSS filed 4,737 new dependency petitions.
- PSS filed 2,065 severance motions and petitions.<sup>2</sup>
- PSS filed 453 guardianship motions on behalf of DCS.
- PSS assisted DCS in reuniting 2,847 children with their parents.
- PSS assisted DCS in placing 615 children with permanent guardians.
- PSS assisted DCS in the adoption of 3,105 children by relatives or foster parents.

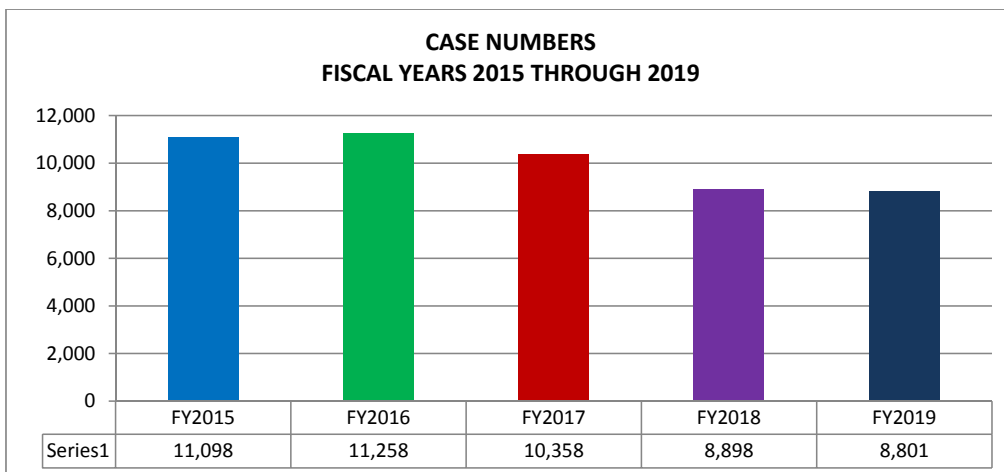
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<sup>2</sup> Establishing permanency is the goal for all children in DCS's custody. If reunification with a parent cannot be achieved, DCS will proceed with severance of parental rights to free the child for adoption. PSS has continued its efforts with the Case Permanency Staffings to ensure timely review of cases for permanency and to identify grounds 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 permitted adoptions at a much earlier stage in the proceedings.

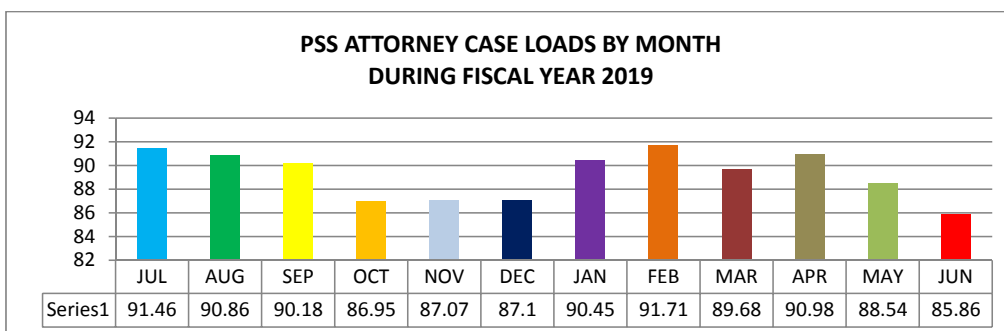
# Child and Family Protection Division



The reinstatement of prevention programs has continued to be the focus for the Department and the courts. The Department continues to implement more home based safety plans to remove less children from their homes. The Court is focusing on the use of dependency prevention or alternative resource programs to reduce the filing of dependency petitions.



Similarly, PSS also has seen a reduction in the number of open cases at the end of FY2019.



## Child Support Services Section

CSS seeks to ensure that children receive financial support from both parents. The Section provides legal advice and representation to DES's 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 10 of its 11 statewide offices in the following counties: Cochise, Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai, and Yuma. CSS also handles the litigation in six additional counties; namely, Apache, Graham, Greenlee, La Paz, Navajo, and Santa Cruz.

### **Litigation Practice**

CSS attorneys engage in fast-paced litigation in the Family Court Division of the Arizona Superior Court. Because approximately 45% of Arizona's children are born to unwed parents, establishing paternity is often the first step in child support litigation. The majority of paternity orders are entered by the Voluntary Acknowledgment process through DCSS's Hospital Paternity Program and do not require litigation.

Arizona child support law is designed to ensure that the child support order is the appropriate amount for the parents and the child. Because parents' financial circumstances and the child's financial needs change throughout the potentially eighteen-year life of a child support order, many parents request a review of their order to determine whether a change—a modification—would be appropriate. As part of its service, DCSS provides a "modification review" to determine what the modified order may likely be and subsequently refers the case to CSS. In FY2019, modifications constituted 24% of CSS's caseload.

In all, CSS attorneys prepared for and/or attended 23,392 court appearances; provided legal advice on 7,283 cases; and reviewed 20,796 cases to determine their appropriateness for litigation. To increase the collections for both current support and arrears, CSS attorneys filed 1,163 enforcement actions. Overall, the CSS caseload increased to 8,034 cases at the close of FY2019.

### **Policy and Training**

CSS attorneys advise DCSS on various legal issues arising from federal and state statutes, regulations, policies, and court decisions. As such, CSS trains its new and veteran attorneys with these legal authorities in mind. CSS also offers certain training to DCSS employees regarding implementation of these various legal requirements. In recent months, CSS and PSS have worked together to develop practices and to educate the juvenile court bench regarding the court's ability to address child support during dependency proceedings.

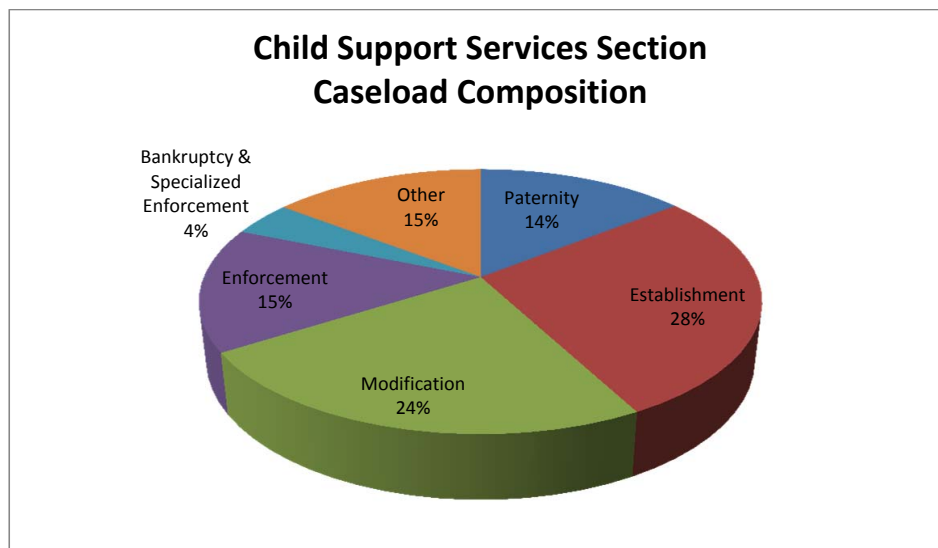
### **CSS Appellate Matters**

The Appeals Unit dedicates one attorney to handle all CSS appeals, with additional support provided by other team members as needed. Attorneys handling CSS appeals discuss each case with an experienced reviewer in the Solicitor General's Office, which results in resolving many of those matters through substantive motions rather than appellate briefing. The Appeals Unit filed approximately seven appellate briefs and numerous substantive motions in FY2019, and provided a great deal of assistance to CSS trial attorneys.

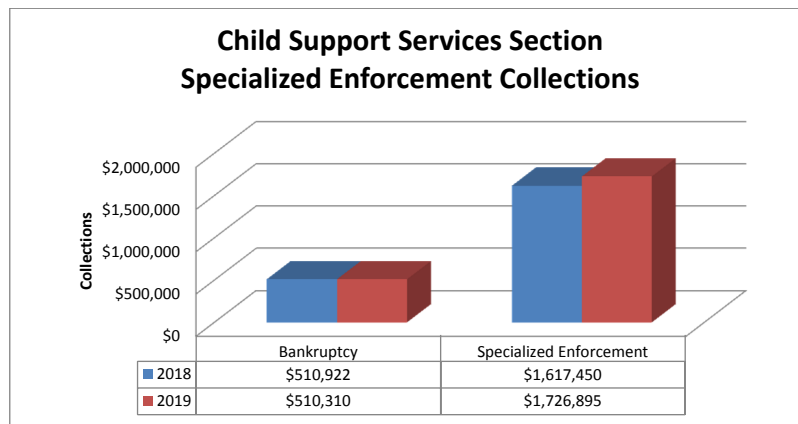
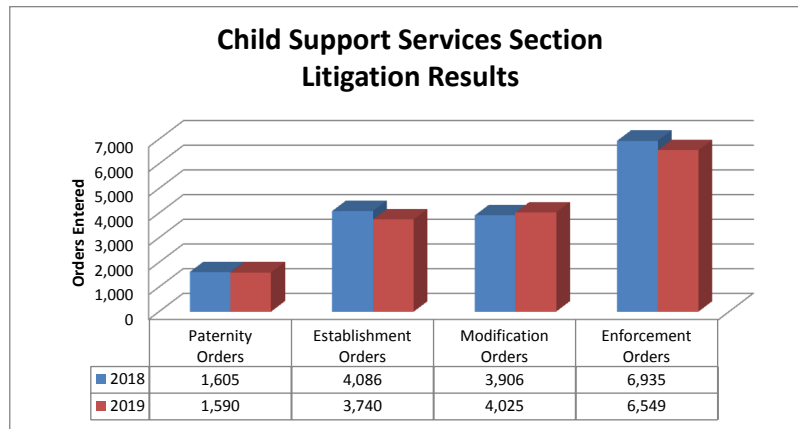
# Child and Family Protection Division

## FY2019 Accomplishments:

- Judicially established paternity for 990 children.
- Established new child support orders for 3,740 families.
- Obtained child support judgments of over \$29 million.
- Resolved 4,025 actions for modification of support.
- Assisted DCSS to collect over \$343,915,376 in support.
- Contributed to increased current support collections from 58.83% to 59.8% for every child support dollar owed.
- In bankruptcy cases, collected \$510,310 in support.
- In non-family court litigation and administrative enforcement mechanisms, collected \$1,726,895 in support<sup>2</sup>—a 6.8% increase from FY2018.



<sup>2</sup> Non-Family Court litigation consists of liens, insurance claim seizures, probate, and settlements.



## Civil and Criminal Litigation and Advice

CLA provides legal advice and representation to all DES programs except DCSS and advises and represents DCS in all matters other than cases handled by PSS. CLA advises and represents DES 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 DES 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 DES programs, parents who willfully fail to provide support for their children, and incarcerated individuals who escape from the child support work furlough program.

## CLA Appellate Matters

The Appeals Unit's work for CLA largely consists of appeals from final agency decisions in unemployment-insurance tax and benefits cases and Superior Court decisions regarding substantiating allegations of child abuse and placement on the DCS central registry. The Unit has two attorneys dedicated to CLA appeals, with additional support from other team members as needed. In FY2019, the Appeals Unit filed approximately twelve appellate briefs. The Court of Appeals issued two opinions in FY2019, and there are five matters pending review in the Arizona Supreme Court.

### In FY2019, the CLA Civil Practice Team:

- Opened, litigated and/or reviewed 1,476 administrative litigation and civil cases.
- Opened and reviewed 144 contracts, leases, Intergovernmental Agreements and/or amendments.
- Obtained 532 civil judgments in civil collections cases totaling \$1,538,499.03.
- Secured an additional \$61,126.93 in civil judgment collections without the need for reducing multiple matters to a judgment.
- Collected \$681,795.58 through wage and bank garnishments.
- Filed 646 civil collections cases.
- Opened 147 "matter" files for tracking significant legal advice provided to DES.
- Responded to 857 subpoenas and requests for public records.



## Administrative, Civil and Appellate Litigation Resolved (Cases Closed)

Program	Cases Closed
Adoption Subsidy	3
Adult Protective Services Review Team	265
Cash Assistance	1
Child Care Administration	1
Contracts/Leases/IGA	83
Department of Child Safety (DCS)	2
Department of Economic Security (DES/DMR)	1
Division of Benefits/Medical Eligibility (DFS)	1
Division of Child Support Services	2
Division of Developmental Disability: Grievances	69
Division of Developmental Disability: Long Term Care	14
Division of Developmental Disabilities	41
Equal Employment Opportunity Commission (Matters)	4
Food Stamp Administration	21
Foster Care Licensing	4
Guardianship Subsidy	1
Licensing/Agency	5
Medical Assistance Under DBME	1
Personnel Department of Child Safety	2
Personnel Division Of Business and Finance	1
Personnel Division Of Developmental Disabilities	5
Personnel Division Of Employment Of Rehabilitation Services	1
Protective Services Review Team	284
Rehabilitation Services Administration (RSA)	1
SNAP	3
Unemployment Insurance Benefits	208
Unemployment Insurance Contributions	6
Vocational Rehabilitation and Blind Services	44
<b>Grand Total</b>	<b>1074</b>

# Child and Family Protection Division

## FY2019 - CLA Civil Collections Unit:

<b>Civil Collections by Program</b>			
<b>Program</b>	<b>Filed</b>	<b>Judgments Entered</b>	<b>Total Judgments</b>
Cash Assistance	2	1	2,227.00
Child Care	3	0	0
Combination Cases	17	9	36,125.10
Employee Overpayment	1	2	3,761.66
Food Stamp	9	7	39,228.37
Unemployment Insurance Benefits	614	513	1,457,156.90
<b>Grand Total</b>	<b>646</b>	<b>532</b>	<b>\$1,538,499.03</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>
Food Stamp	3	\$8,932.00
Unemployment Insurance Benefits	20	\$52,194.93
<b>Grand Total</b>	<b>23</b>	<b>\$61,126.93</b>

<b>Garnishment Collection Summary</b>	
<b>1<sup>st</sup> Quarter 2018</b>	<b>\$188,248.35</b>
<b>2<sup>nd</sup> Quarter 2018</b>	<b>\$161,652.16</b>
<b>3<sup>rd</sup> Quarter 2018</b>	<b>\$165,357.05</b>
<b>4<sup>th</sup> Quarter 2018</b>	<b>\$184,237.11</b>
<b>Grand Total</b>	<b>\$699,494.67</b>

# Child and Family Protection Division

In FY2019, the CLA Criminal Practice Team:

- Filed 296 criminal cases.
- Obtained 287 criminal sentences.
- Obtained restitution orders totaling \$689,536.72.
- Collected \$788,577.98 in restitution prior to sentencing.
- Obtained orders in fines totaling \$29,400.00.
- Obtained orders for 3,639 hours of community service.

Program	Cases Filed	Cases Sentenced	Restitution Ordered	Restitution Paid prior to Sentencing	Fines Collected	Community Service Hours
Combination Case	1	0	0	0	0	0
Food Stamp	38	31	\$147,257.00	\$49,627.00	\$1000.00	404
Unemployment Insurance Benefits	257	256	\$542,279.72	\$738,950.98	\$28,400.00	3,235
<b>Grand Total</b>	<b>296</b>	<b>287</b>	<b>\$689,536.72</b>	<b>\$788,577.98</b>	<b>\$29,400.00</b>	<b>3,639</b>



Division Chief Paul Ahler

## MISSION:

*To protect the citizens of Arizona by investigating and prosecuting criminal cases within the State of Arizona. To promote and facilitate safety, justice, healing and restitution for Arizona's crime victims. To investigate and prosecute Medicaid fraud and 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

CRM is divided into seven Sections: Drug & Racketeering Enforcement Section (DRG); Financial Remedies Section (FRS); Fraud & Special Prosecutions Section (FSP); Health Care Fraud & Abuse Section (HCF); Office of Victim Services (OVS); Southern Arizona White Collar Crime & Enterprise Section (SAWCCE) and Special Investigations Section (SIS).

## Long Time Criminal Staff Member Receives APAAC's Lifetime Achievement Award

Carol Keppler joined the Attorney General's Office in 1985 and began a 34-year distinguished career that touched many areas throughout the AGO. A legal assistant is often called upon to be a jack of all trades and Carol exemplifies that description. She began as a Senior Legal Assistant Project Specialist in the Organized Crime and Racketeering Division where she conducted legal research, drafted motions, secured out-of-state witnesses and assisted at trials.

Soon after Arizona's forfeiture Chapter was added in 1986, Carol was assigned to the Financial Remedies Section of the Criminal Division to work for its Chief, Cameron "Kip" Holmes. This section is dedicated to prosecuting racketeering and asset forfeiture cases. As part of her many duties, Carol assisted in the legislative process on Arizona forfeiture issues, money laundering, Racketeering Influenced Corrupt Organizations (RICO) and money transmitter statutes. She researched and drafted Amicus Curiae Briefs that helped the court interpret these new laws and resulted in favorable opinions for the State of Arizona. Carol created forfeiture forms and procedures, administered numerous trainings on this evolving area of law and continues to coordinate the quarterly statewide Arizona Forfeiture Association meetings. Carol was the legal assistant on many notable cases. In the Sammy "the Bull" Gravano case, the State secured a judgment against his book royalties for victims of Gravano's racketeering crimes. To this day, Carol still has contact with the victims' families and assists the Clerk of the Court in distributing these funds. In another case, Carol assisted in the seizure, forfeiture and return to investors of more than \$106 million dollars involved in a hedge



Pictured: Division Chief Paul Ahler and Carol Keppler

fund fraud. Perhaps the most notable case she assisted in involved the State's use of newly-created Geographic Targeting Orders, Sweeping Warrants and transactional data analysis that led to the historic \$94 million dollar settlement agreement in 2010 between the border state AGOs and Western Union Financial Services (WU) and the formation of the Southwest Border Anti-Money Laundering Alliance (Alliance).

Carol was involved in many important areas of the Alliance, including serving as training coordinator and later as the Deputy Director, where she was responsible for many of its day-to-day operations. She was an invaluable resource to the Executive Board, comprised of the Attorneys General of the four border states and three Arizona law enforcement agencies that conducted the WU investigation. Carol helped manage the program's grant awards to fight money laundering along the southwest border and conducted an on-site audit of the New Mexico Attorney General's Office Alliance grant initiative. She served as webmaster of its website, and helped coordinate the Alliance Unity Training Program. She also maintained the complex AGO WU legal case file. In 2014, the historic WU settlement agreement was amended and resulted in the formation of the Transaction Record Analysis Center (TRAC) that provides financial data and analysis to thousands of state and federal law enforcement users. Carol was actively involved with the AGO's WU litigation team, attending meetings and reviewing and editing settlement amendment documents. Carol's vast historical knowledge of the WU case and settlement agreement were invaluable to the AGO in securing this amendment. Carol serves as the Corporate Secretary of Transaction Record Analysis Center (TRAC), participates at all TRAC/WU meetings held throughout the year and ensures TRAC maintains its good standing with the Arizona Corporation Commission.

Carol has served under six Arizona Attorneys General. Her commitment to public service has been an invaluable asset to the AGO, the organizations she has represented and to the citizens of Arizona. Her career exemplifies the highest standards of dedication to the Legal Assistant profession. Carol will be retiring from the AGO soon and we wish her the best of luck in her retirement.

### 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 FY19, DRG had 541 open cases and resolved 282 of them. DRG cumulatively charged 275 defendants with felony offenses. Total drug seizures in cases for FY19 are well in excess of 1,114.2 lbs. of methamphetamine with an approximate wholesale value of \$2,228,400, 120.4 lbs. of heroin with an approximate wholesale value of \$1,509,091.71, 105.46 lbs. of cocaine with an approximate wholesale value of \$1,438,090.90, 4,266.2 lbs. of marijuana with an approximate wholesale value of \$1,279,860, 100,238 pills and 10.6 lbs. of Fentanyl with an approximate wholesale value of \$2,120,396.36, cash seizures totaling \$1,181,874.27, 4 large scale illegal marijuana grow operations and 2 illegal marijuana delivery businesses and one money laundering organization that laundered in excess of \$19,000,000 in a two year period to Sinaloa, Mexico. Courts ordered defendants to pay \$1,252,460 in fines and \$111,752 in restitution. In addition, 68 criminal defendants were prosecuted for violation of probationary terms.



## Major Cases

*Investigation CWT-503:* Beginning in October 2017 and continuing through June 2019, Case Agents with the Drug Enforcement Agency (DEA) Strike Force and Tempe Police Department conducted an investigation targeting a group of individuals responsible for distributing illegal drugs in the Phoenix metropolitan area, including an individual known initially as “Chabelo,” eventually identified as Isabel Cenicerros-Alvarado. Agents sought and obtained court authorization to intercept the telephonic communications of Chabelo and numerous associated individuals also involved in distributing illegal drugs and/or laundering illegal drug proceeds. Over the course of CWT-503, agents arrested 103 suspects, issued 35 indictments against 68 defendants, seized approximately 70 lbs. of cocaine, 72 lbs. of heroin, 900 lbs. of methamphetamine, 48,610 pills containing fentanyl, 65 weapons and \$1.1 million dollars in cash. Orlando Bueno Hernandez was identified as a local drug trafficker and was contacted by police after intercepted calls indicated he was delivering illegal drugs to a customer. A search warrant was served at his home, where police found 95 lbs. of methamphetamine, two lbs. of heroin and \$20,000 in cash. In June, Bueno Hernandez pled guilty to Possession of Dangerous Drugs (Methamphetamine) for Sale and was sentenced to six years in prison. He also was ordered to pay a fine of \$35,600.



*Investigation CWT-509:* Beginning in December 2017 and continuing through July 2018, detectives with the Phoenix Police Department conducted an investigation targeting a Mexico-based drug trafficking organization (DTO) responsible for distributing illegal drugs in the Phoenix area. During the investigation, police identified Mauricio Perez-Martinez as the leader of a local drug distribution cell. Investigators obtained court authorization to intercept the telephonic communications of Perez-Martinez and numerous associated individuals involved in distributing illegal drugs and/or laundering the resulting illegal drug proceeds. The CWT-509 investigation resulted in the indictment of 21 defendants and seizures of approximately 127 lbs. of cocaine, 37 lbs. of heroin, 133 lbs. of methamphetamine and \$154,500 in cash. Perez-Martinez pled guilty to two counts of Possession of a Narcotic Drug (Cocaine) for Sale and was sentenced in February 2019 to eight years in prison, followed by five years of supervised probation. He also was ordered to pay a fine of \$7,320.



*State v. Jacque Glessner:* In December 2017, police responded to a 9-1-1 call at a condominium complex on Tempe Town Lake. While there, officers observed Glessner loading equipment used to manufacture marijuana concentrates into a truck. Police executed a search warrant on Glessner’s residence and found 75 lbs. of cannabis and 322 lbs. of marijuana. Police also found large canisters of butane, seven vacuum ovens and two closed-loop butane cannabis extraction machines. Inside Glessner’s car, police found three cell phones, a drug ledger, over \$29,000 in cash and additional cannabis. Based on the amount of butane found in the condo, the complex was evacuated for eight hours while authorities dismantled the lab. Glessner pled guilty to Attempting to Possess Chemicals or Equipment to Manufacture a Narcotic Drug and was sentenced to 1.5 years in prison and ordered to pay a fine of \$10,980.



*State v. Tristan Lobo:* As part of its response to the synthetic opioid overdose increase attributed to illegally produced Fentanyl, the High Intensity Drug Trafficking Area (HIDTA) program began this investigation. In this case, the state's key witness suffered a Fentanyl overdose in May 2018. The witness told law enforcement that Lobo, who had recently turned 18 years old, had provided him the Fentanyl. Lobo was contacted by investigators and had pills containing Fentanyl in his possession. Although he appeared to be a low-level dealer, in March 2019, Lobo pled guilty to Illegally Controlling an Enterprise and was sentenced to nine months in jail, followed by three years of probation. He was also ordered to pay a fine of \$4,575.

*State v. Ramon Frausto:* In February 2018, investigators with the Maricopa County Sheriff's Office (MCSO) concluded an investigation into Frausto for operating a largescale, illegal marijuana grow facility in Tolleson. During the search warrant at his remote property, investigators found school trailers that had been converted into a large marijuana grow facility, containing 1,198 plants. Investigators also determined that Frausto had been siphoning off power illegally to power the marijuana grow. In October 2018, Frausto pled guilty to Conspiracy to Commit Production of Marijuana and Misconduct Involving Weapons. He was sentenced to two years in prison and ordered to pay restitution to Arizona Public Service in the amount of \$108,292.



*State v. Taylor:* In June 2013, special agents with DEA conducted surveillance on Taylor after they overheard him standing in line at a convenience store talking on his telephone about working with an outlaw motorcycle gang. During their surveillance of Taylor, they observed him drive a semi-tractor and trailer to an abandoned warehouse parking lot at night and meet with two individuals in a rental van. Following this meeting, Taylor drove the semi-tractor and trailer onto Interstate 10 and drove through Phoenix toward Tucson. DPS Troopers stopped Taylor, searched the trailer and found 13 duffel bags containing 25 bundles of marijuana, weighing 594 pounds. Taylor was on bench warrant status for several years before the case went to trial in July 2018. Taylor attended the trial, but when the jury was deliberating he absconded and failed to appear for the reading of the guilty verdict. He was quickly apprehended in the Detroit metro area and extradited back to Arizona. The jury found Taylor guilty of Conspiracy, Illegally Conducting an Enterprise and Transportation of Marijuana and was sentenced to nine years in prison. He was also ordered to pay a fine of \$91,500.



## Financial Remedies Section

The Financial Remedies Section (FRS) disrupts and dismantles criminal organizations by investigating racketeering crimes and prosecuting civil lawsuits against people and property engaged in racketeering felonies. FRS seeks money judgments and remedial and protective orders against individuals and corporate offenders and judgments forfeiting proceeds and property derived from and dedicated to racketeering activity. The purpose of these civil lawsuits is to remediate the economic injury caused by individuals and criminal enterprises who engage in profit-motivated felonies, compensate victims for their economic loss, remove the proceeds and property gained and used in the illegal activity and re-purpose those assets to law enforcement for additional training, investigations, prosecutions, operations and programs that protect the public. FRS cases apply to a wide range of crimes, including drug trafficking, money laundering, theft, fraud schemes, counterfeit merchandise, securities fraud, illegal gambling, prescription drug “pill-mill” enterprises and SNAP, AHCCCS and other public benefits fraud. FRS works with many federal, state and local law enforcement partners, seizes bulk cash and financial accounts and a wide-range of real and personal property, manages all the seized property and distributes the proceeds of forfeited property to victims, state agencies and investigating law enforcement agencies. FRS also works with other sections of the Criminal Division to help secure and recover restitution for citizens, businesses and state agencies that have been victimized by racketeering crimes.

Through the use of Arizona’s racketeering and forfeiture laws, FRS’ civil law enforcement cases deprive profit-driven offenders and criminal enterprises of the property and profits that keep them in business, deter others from committing such crimes and alleviate and remedy the negative economic impact that racketeering has on Arizona’s citizens and legitimate commerce.

### Overview of Accomplishments

In FY19, FRS disrupted 104 criminal enterprises and filed 148 forfeiture actions against 2,754 in personam defendants and in rem assets. FRS obtained 22 seizure warrants authorizing the seizure of assets worth \$16.4 million dollars; that figure reflects the extent of the injury to victims and the general public caused by the racketeering activities. FRS successfully concluded 109 cases. After resolving the interests of third-party owners, lienholders and exempt ownership interests in the seized properties, FRS obtained final judgments that forfeited assets with a gross value of more than \$16.7 million dollars. They also distributed a net amount of over \$9 million dollars to investigating law enforcement agencies and individual, business and state department victims. In addition, FRS attorneys conducted nine forfeiture trainings which were attended by 245 law enforcement agents from across the state.



<b>Financial Remedies Section Metrics</b>					
<b>Metric</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
Net Distributions from Forfeited Property (\$ Million)	\$13.80	\$8.00	\$8.00	\$6.25	\$9.00
Estimated Gross Value of Seized Property (\$ Million)	\$26.30	\$23.40	\$16.30	\$13.90	\$16.70
New Cases Submitted	207	200	246	203	198
Assets Included in New Cases Submitted	1811	1811	1665	1158	1423
Judgments Entered <i>In Personam</i> and <i>In Rem</i> Assets Forfeited	196	177	226	205	109
Seizure Warrants Obtained	2000	2344	2395	2472	2754
	25	24	25	9	22

FRS continues to protect the integrity and effectiveness of forfeiture practices in Arizona by educating practitioners about public safety and compensatory resources and providing good stewardship over the application of Arizona's racketeering and forfeiture statutes. FRS continues to train and work closely with law enforcement and regulatory agencies across Arizona in identifying and addressing emerging crime trends. FRS follows numerous due process safeguards in the statutes that ensure the rights of property owners to enter and contest cases and that protect legitimate private and commercial property interests exempt from forfeiture.

Over the last three fiscal years, FRS has worked with attorneys from the Civil Litigation Division (CLD) to defend against two federal lawsuits brought by special interest groups on behalf of selective plaintiffs challenging the constitutionality of Arizona's forfeiture statutes and seeking damages and declaratory and injunctive orders. The cases arose from forfeiture actions brought by Pinal and Navajo County authorities. The requested relief would have been binding on all Arizona forfeiture cases and would have significantly restricted, if not eliminated, the application of Arizona's forfeiture statutes. FRS and CLD obtained dismissals of both cases. In FY19, FRS and CLD teamed up again to oppose the Navajo County plaintiffs' appeal of the dismissal of their case. That appeal is still pending in the Ninth Circuit.

FRS continues to chair the statewide Arizona Forfeiture Association (AFA) comprised of police and prosecutors who conduct civil forfeiture law enforcement. AFA's purpose is to promote information relating to statewide forfeiture cases in a consistent, professional and ethical practice. AFA discusses case law decisions, legislative measures, investigative resources, strategies and procedures and best practices in conducting forfeiture investigations and prosecutions.

## Major Cases

Arizona's Courts have recognized that the purpose of our racketeering statutes is "removing the economic incentive to engage in racketeering, reducing the financial ability of racketeers to continue to engage in crime, preventing unfair business competition by persons with access to crime proceeds, compensating victims of racketeering and reimbursing the State for the costs of prosecution." Drug trafficking cases continue to form the majority of FRS cases. FRS also continues to conduct civil forfeiture prosecutions against a wide range of other racketeering crimes.

### Conclusion of a Historic Case: *State v. Western Union Financial Services, Inc.*

In June 2019, the AGO and Western Union Financial Services concluded the 2010 landmark \$94 million settlement agreement to fund border crimes prosecutions, anti-money laundering investigations and monitor and assess Western Union's anti-money laundering practices, implement "best practice" standards and verify the implementation of those standards for preventing, detecting and reporting illicit money laundering efforts by customers of Western Union. The genesis of the Western Union litigation and agreement was the prevalence of human smuggling and money laundering activity in Arizona and the other southwest Border States. Based on the development and use of geographic targeting orders, sweeping warrants and transactional data analysis in 2007, the AGO, led by the visionary direction of the late FRS Chief Counsel, Cameron H. "Kip" Holmes, began an investigation into allegations that between 2003 and 2007 Western Union's wire transfer services were being used by smugglers and drug traffickers to transfer illicit proceeds, primarily to Mexico. After lengthy negotiations and three appellate opinions from the Court of Appeals and the Arizona Supreme Court, the AGO and Western Union agreed that, instead of engaging in complex court litigation, the two parties would attempt to create best practices for an anti-money laundering program that Western Union would implement. In 2010, Western Union entered the agreement to monitor and assess Western Union's anti-money laundering practices, raise them to a "best practice" standard and verify their implementation for preventing, detecting and reporting illicit money laundering efforts by customers of Western Union. Over the course of the agreement, significant advancements in anti-money laundering investigations and data analysis resources were developed. In 2014, the Judge ordered the case to be designated a historically significant case and all files to be kept in the Arizona State Library Archives and Public Records. Honorable Warren Granville, the judge who oversaw the case from inception to conclusion, stated "the commitment and dedication of the Arizona Attorney General's Office and Western Union have resulted in a much broader and longer lasting benefit to the people of Arizona and the United States than would have been accomplished by any litigation."



*Pictured from left are AGO staff Liz Barrick, Paul Ahler, Carol Keppler, Thomas Rankin, Rich Lebel and Kalon Metz, along with Judge Warren Granville and Western Union's attorneys and corporate staff.*

## Drug Trafficking Organizations

*State v. Mauricio Perez-Martinez, et al.*: In late 2017, the Phoenix Police Department and DEA began a long-term investigation of a Mexico-based DTO that included a wiretap on Mauricio Perez-Martinez. During the

investigation, officers seized 133 lbs. of methamphetamine, 36.5 lbs. of heroin and 96.8 lbs. of cocaine with a street value totaling approximately \$3.8 million dollars. In 2019, FRS successfully concluded a forfeiture case resulting in the forfeiture of \$159,486 in drug proceeds, handguns, a semi-automatic rifle and multiple vehicles used to commit drug trafficking and money laundering offenses. Criminal prosecution ensued against Perez-Martinez and 20 other co-conspirators who participated in or facilitated the DTO, with Perez-Martinez. Perez-Martinez was sentenced to eight years in prison.



### Wiretap Investigations

*State v. Oscar Ruben Lopez-Corrales*: The Tempe Police Department and DEA investigated a subject known as “Mayo,” later identified as Oscar Ruben Lopez-Corrales, who was distributing drugs in Phoenix. Through a wiretap agents learned that Corrales was going to provide a customer with two lbs. of methamphetamine. Surveillance agents watched Corrales arrive at a residence and leave a short time later carrying a gift bag suspected to contain the methamphetamine. Agents contacted Corrales in his car and saw the gift bag on the floorboard. A drug detecting dog alerted on the car. During an ensuing search, agents retrieved the gift bag and found two lbs. of methamphetamine inside. A search of the residence revealed an additional 27 lbs. of methamphetamine, several ounces of cocaine, drug packaging, drug ledgers and several bundles of bulk cash totaling \$189,930. Corrales admitted he had been distributing 25 lbs. of methamphetamine per month. FRS forfeited the \$189,930 in drug proceeds and other property facilitating the criminal enterprise.

In another wiretap investigation by Tempe Police Department and DEA, *State v. Rosendo Ortiz, Jr.*, two seizures of bulk cash were made within a three-day period totaling \$85,874, along with 30,300 Fentanyl pills and an AK-47. FRS obtained a forfeiture judgment against the bulk cash and firearm.

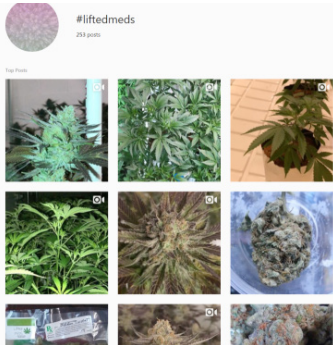
### Enforcement Against Black Market Marijuana Sales Through Social Media Sites

*State v. Jeffrey Barham, et al*: Marijuana sales through social media sites have become increasingly commonplace; however, are in violation of the Arizona Medical Marijuana Act. The Arizona Department of Public Safety (DPS) learned Barham and Eryan Segan were involved in selling marijuana and cannabis through Facebook messenger. Officers obtained a search warrant for Barham’s residence. During the search, detectives located 19 firearms, a bulletproof vest, \$12,322 cash, security cameras, a large amount of lab equipment being used to process marijuana, nine lbs. of cannabis, 33 lbs. of high-grade marijuana and 380 lbs. of a mixture of marijuana, trim, shake and bud. The drugs had a street value of approximately \$250,000. The equipment was worth approximately \$100,000. Two vehicles belonging to Barham were also seized. FRS obtained a forfeiture judgment against all of the property.

*State v. Anthony Hamilton*: FRS assisted the Maricopa County Drug Suppression Task Force (MCDST) in its efforts to disrupt the sale and distribution of marijuana and marijuana concentrates through social media. In a long-term investigation, MCDST apprehended Hamilton, who manufactured and sold cannabis through Instagram using the title “The Healing Alchemist.” MCDST had surveilled Hamilton’s residence and saw him and two other men load numerous large boxes into a truck. These boxes were similar to cases of cannabis vape cartridges Hamilton regularly featured on his social media. Officers served a search warrant, finding 3,000 cannabis cartridges in boxes, bags of marijuana, multiple firearms, \$26,422 in cash and a body armor vest with DEA marking on it. FRS forfeited the money and body armor.



*State v. Blake Hunter, et al:* MCDST detectives discovered advertisements of marijuana for sale on Instagram under the brand name “Lifted Meds.” MCDST identified Hunter, Jesse Conboy and Alex Womeldorph as the operators of Lifted Meds. Through GPS tracking, surveillance and social media monitoring, detectives located their warehouse. Detectives executed search warrants and found 175 growing marijuana plants, 14.5 lbs. of marijuana,



350 grams of shatter (hash oil concentrate), 169 cartridges of distillate, a BHO extraction machine and packaging/labels for Lifted Meds at the warehouse; along with 140 individual gram bags of cannabis at the residences; and an additional 2.3 lbs. of marijuana and 100 individual gram e-cigarette cartridges in their cars. FRS forfeited over \$36,000 of seized cash, a gun safe and the equipment used to grow and process marijuana and by-products.



## Drug Trafficking in Neighborhoods

*State v. Shawn Coates:* The Tempe Police Department arrested Coates at his residence for bulk marijuana sales and money laundering occurring at his residence. Police had stopped the co-conspirators leaving the residence and confiscated bulk marijuana or bulk cash. A search warrant executed at the residence revealed further evidence of illegal marijuana sales. Detectives recovered 119 lbs. of hydroponic marijuana, 52 lbs. of other marijuana, over \$96,544 in bulk cash, 15 grams of cocaine, one ounce of psilocybin mushrooms, five ounces of hashish, multiple cell phones containing information about marijuana sales, marijuana grow equipment, bulk marijuana packaging materials and other drug paraphernalia used to weigh, store and ingest marijuana. A document in the residence referred to another residence Coates was using that led to the search of that property. Agents discovered another 64 lbs. of marijuana and five ounces of hashish. FRS brought a forfeiture case against the drug proceeds and facilitating property and obtained a judgment forfeiting the bulk cash and the facilitating property, worth \$17,000.

## Bulk Cash Money Laundering

*In re: \$49,749:* This case arose out of an investigation of a large-scale cocaine and methamphetamine distributor in Phoenix. Through a wiretap investigation, detectives learned that Octavio Mizquez-Quinonez was going to sell drugs to an unknown buyer. Mizquez-Quinonez had been in contact with an individual known as “Miguel” who was setting up the meeting with the buyer. “Miguel” and Quinonez agreed to make the delivery together. Surveillance units watched Quinonez get into a truck driven by Miguel at a Phoenix Walmart and the pair then traveled to a residence. Detectives observed multiple vehicles come and go from the residence. Mizquez-Quinonez and Miguel stayed at the residence for about ten minutes and then left. An intercepted call confirmed a transaction had taken place. A man was observed attempting to leave the house carrying a small white box with black tape on it, but he retreated into the house. Detectives executed a search warrant at the residence and found one kilo of cocaine, one pound of methamphetamine, one half-pound of heroin, a stolen gun, numerous cellphones, a Jennings 22 pistol and \$49,749 in bulk cash. FRS obtained a judgment forfeiting the bulk cash and firearms.

## Airport Proceeds Courier Interdiction

In May 2018, FRS and the detectives from the Phoenix Police Department Commercial Narcotics Investigation Unit (CNIU) partnered to disrupt the distribution of illicit cash proceeds through air travel. As of August 2019, FRS has reviewed and filed over 30 forfeiture submittals from CNIU detectives representing over \$1.3 million

dollars in suspected drug trafficking proceeds being transported through Sky Harbor Airport. Approximately 90% of these cases resulted in the forfeiture of money from couriers.

*State v. Ricardo Moreno:* Based on “ticket tip” information, CNIU investigators contacted two subjects traveling from St. Louis to Sacramento with a stop in Phoenix. The subjects were transporting \$26,700 of suspected drug proceeds. A search warrant was obtained for the suspects’ cell phones, revealing text messages, photos, receipts for shipping parcels and wire transfers describing illegal drug sales and a “trophy photo” of a man posing with a large quantity of bulk cash. The seized currency was forfeited.

*State v. Peter Maldonado:* Based on “ticket tip” information, information revealed possible drug-related money laundering by Maldonado. CNIU observed suspicious factors and contacted Maldonado after he deplaned in Phoenix on a flight from Orlando. Maldonado had been arrested less than one year earlier in Florida for a drug transportation offense. He consented to a search of his suitcase, in which detectives found \$87,980 in a hidden panel. The money was damp and had a detergent smell to it, the result of “washing” to mask the smell of drugs. Maldonado signed a disclaimer indicating the suitcase was borrowed and he had no knowledge of the money. His cell phone displayed text messages concerning where he was selling cannabis oil. The seized currency was forfeited.

### Assistance to Rural Law Enforcement Agencies

FRS routinely provides technical assistance, forfeiture trainings and publications throughout Arizona, including to rural agencies and conducts cases for them, resulting in successful partnerships.

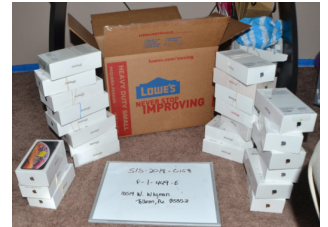
*State v. Malik Lackey, et al:* A deputy with the Navajo County Sheriff’s Office (NCSO) conducted a traffic stop on a car on westbound Interstate-40 for a civil traffic offense. The car had been rented in Indianapolis the previous day by a third-party customer. The three occupants were traveling to San Diego. The deputy noticed a freshly lit cigar in the car, which is a tactic used to mask the smell of drugs. He also observed the occupants remained extremely nervous during the stop for a minor violation. The occupants informed the officer that they were traveling to California for leisure, yet were making the entire 31-hour trip without rest. The driver told the deputy that he had \$9,000 in the car. After a positive alert on the vehicle from a drug detecting dog, officers found \$32,050 in cash. FRS filed a forfeiture action for the NCSO. During litigation the occupants and their attorney were unable to produce any documentation supporting lawful acquisition of the money and further investigation yielded evidence of suspicious financial activities. The seized currency was forfeited.

### Victim Protection and Compensation

*In the Matter of \$28,000 in Funds Seized from US Bank Account:* FRS and AG Special Agents recovered \$28,000 for a vulnerable adult who was the victim of a “Dark Web” scam. The Dark Web contains “dark” networks and markets where people transact illicit goods and services with anonymity, including hacked or stolen personal and financial information. They then use the data to commit identity theft, fraud and other crimes. Scammers search for victims through email, messaging apps and social media sites. They tout the dangers of the Dark Web, establish relationships of trust and then offer to remove data from the Dark Web for a fee, stringing victims along for additional services and payments. These financial predators target susceptible and vulnerable victims. In this case, an elderly victim was approached through email and text messaging via her cell phone and convinced to make payments totaling \$28,000. Agents identified the bank account where the payments were sent. Because

scammers often transfer stolen funds out of their accounts quickly, SIS enlisted FRS to secure the funds through a seizure warrant served on the bank. FRS then conducted civil forfeiture proceedings, divested the funds from the fraudster and returned the funds to the victim. This case is an example of the AGO commitment to using all available legal tools to recover funds and compensate victims of racketeering crimes.

*State v. Titanium Tech, LLC*: AG Special Agents and DPS conducted a joint investigation into a large-scale stolen cellphone trafficking enterprise. Expanding from an identity-theft case, agents learned that multiple suspects were using fictitious driver's licenses, ID cards and other stolen personal identification and information to fraudulently purchase high-end cellphones. That scheme left the cell phone makers and retailers without payment. The fraudulently obtained cellphones then were sold to Titanium Tech and other putative companies, which resold the stolen phones for profit. FRS filed a forfeiture action and has obtained several settlement agreements for the forfeiture of hundreds of thousands of dollars for business victim compensation.



## Sex Trafficking and Prostitution Enterprises

*State v. Eun Shin et al*: The Tempe Police Department and AG Special Agents investigated the activities of two massage businesses in Tempe and Mesa after receiving information that prostitution was ongoing inside. Through interviews, electronic and physical surveillance, analysis of financial records, public record searches, phone analysis and other investigative techniques, agents determined that the businesses were operating as fronts for prostitution. Agents estimated that the enterprise generated over \$3.7 million dollars in illicit, largely unreported income over a number of years. FRS assisted with the acquisition of seizure warrants authorizing property seizures and filed a forfeiture action. FRS successfully prosecuted the forfeiture case in tandem with the companion FSP criminal prosecution. These investigations are tailored in part to protect the sex workers from being victimized by their profiteering handlers. Since 2016, FRS has partnered with FSP, the Arizona Financial Crimes Task Force (AzFCTF) and other law enforcement partners in a significant number of large-scale prostitution investigations, combating both the financial incentive and victimization inherent in these criminal enterprises.

## Child Exploitation

*State v. Ralyn Trede*: In this case, Arizona's forfeiture statutes were used to dispossess a child predator of the instruments of his planned crime. In an operation and round-up against purveyors of child sex crimes utilizing internet sites, Trede maintained ongoing conversations on an online social website called Doublelist. He believed he was communicated with an adult mother prostituting her 13-year-old daughter; however, Trede was conversing with an undercover detective. He agreed to pay \$300 and provide condoms for 30 minutes of sex with the girl. While driving to the agreed upon location, Trede was stopped and arrested for Child Sex Trafficking and Money Laundering. He was convicted and sentenced to five years of probation. FRS was asked by the detectives from Tempe Police Department to bring a deterrence-based forfeiture action against Trede's \$300 payment and the truck he used to drive to the meeting. Both items were forfeited.

## Fraud & Special Prosecutions Section

The Fraud & Special Prosecutions 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 and sex trafficking and handles conflict matters from other counties.

## Overview of Accomplishments

In FY19, FSP had 1,562 open cases and resolved 579 cases. FSP cumulatively charged 614 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 3,334 victims and obtained more than \$9 million dollars in restitution and \$1,239,156 in fines.

## Major Cases

*State v. Michael Greer:* Between April 2011 and November 2012, while a member of the Pine-Strawberry Water Improvement District (PSWID), Greer violated conflict of interest statutes when he failed to disclose his substantial interest in contracts for the installation and maintenance of generators. As a member of the PSWID board, Greer obtained a contract to install wells. To avoid the conflict of interest, Greer engaged in a strawman sale of his company. As the treasurer of the Gila County Mounted Posse, Greer stole money from the Posse account and lied during board meetings. To cover up his actions, he received a loan from his brother-in-law under fraudulent pretenses. Greer was charged with Fraudulent Schemes and Artifices, Conflict of Interest, Theft and Forgery. In November 2018, he pled guilty to Fraud Schemes, Conflict of Interest and Forgery. He was sentenced to 2.5 years in prison followed by 36 months of probation. Greer repaid all restitution prior to sentencing and agreed to the stipulated fine of \$65,895 that disgorged him of the funds earned under the well contract. At sentencing, on the State's motion, the court allowed the fine to be converted to restitution to cover future costs of needed well repairs.



*State v. Rebecca Sigeti:* Sigeti worked as a bookkeeper for both the Pine-Strawberry Water Improvement District (PSWID) and Sunny Mountain Realty. She used her access to checks and bank statements to write checks for her own personal use. To cover her tracks, Sigeti also wrote checks from PSWID to Sunny Mountain and then took the PSWID funds from the Sunny Mountain account. In May 2019, Sigeti pled guilty to Fraud Schemes and Artifices, Theft and Misuse of Public Funds. She was sentenced to six years in prison followed by seven years of probation. She was also ordered to repay approximately \$841,000 in restitution.

*State v. Kimberly Anne Knight:* The case was received from the Yuma County Attorney's Office because of a conflict. Defendant was convicted by a jury of two domestic violence offenses, Child Abuse and Aggravated Assault. Defendant abused her six-month-old son causing catastrophic injuries. In April 2013, Knight was sentenced to 17 years in prison for Child Abuse and Aggravated Assault causing a Serious Physical Injury. She later filed a Rule 32 petition for post-conviction relief asserting ineffective assistance of counsel for failure to call a medical expert. In February 2019, the Judge held an evidentiary hearing during which the defense called a medical expert to testify that the baby's injuries could have been caused by a short fall. After the hearing, the parties filed closing briefs. Knight's motion was denied and the trial verdict was upheld.



In 2018 and 2019, FSP assisted in Operation Degrostring, Operation No Mulligans and Operation Summer Shield. These undercover sting operations were aimed at identifying individuals interested in purchasing sex with minors online or otherwise meeting with minors for sex by using the internet. FSP worked with Tempe Police Department, Mesa Police Department and AG Special Agents throughout the operations. These investigations resulted in many indictments against individuals arrested during the sting.

*State v. Bryon Wood:* Wood was arrested during one of the undercover child sex exploitation operations for luring a minor for sexual exploitation. Wood admitted during his police interview that his home computer might contain sexual exploitive images that he had downloaded from the internet. A search warrant was executed and forensics revealed many sexually exploitive images of children under 15-years old. Wood was charged with ten counts of Sexual Exploitation of a Minor. In May 2019, he pled guilty to three counts of Amended Sexual Exploitation of a Minor and was sentenced to ten years in prison, followed by supervised lifetime probation and mandatory registration as a sex offender.



*State v. Frank Labarbera, Jr.:* Labarbera was arrested during one of the undercover child sex exploitation operations for luring a minor for sexual exploitation. Labarbera contacted the phone number(s) in the fake ads. During conversations with the undercover decoy officer, he agreed to engage in sex acts for money with the female whom he apparently believed was 14-years old. Labarbera was clearly told in text messages with the undercover officer that he was making a deal for sex with a child. He also sent images of his penis in the text messages. He was told that if he wanted to follow through with the deal, he could; but that if he bailed out, the “child” understood. He was given directions to a house where he was told that the child lived. He drove to the house in Mesa where he was invited in by the undercover detective. On the way in the door, Labarbera grabbed her breast, uninvited. He then confirmed with the detective that he was there to pay for sexual activity with her knowing she was 14-years old. He was then immediately arrested and charged with Aggravated Luring a Minor for Sexual Exploitation, Child Sex Trafficking, Unlawful Age Misrepresentation and Money Laundering. Labarbera pled guilty to Amended Attempted Child Sex Trafficking. In December 2018, he was sentenced to 120 days in the county jail, followed by supervised lifetime probation and mandatory registration as a sex offender.

*State v. Abdiel Hernandez:* Hernandez was arrested during one of the undercover child sex exploitation operation. Hernandez contacted the number(s) in the fake ads. During conversations with the undercover decoy officers, Hernandez agreed to sex acts for money with the female whom he believed was 15-years old. Hernandez sent several images of his penis to the undercover officer. Arrangements were made to meet at a McDonalds. During the arrest, Hernandez drove his car into a police vehicle in an effort to escape. He later admitted he was planning on having sex with the 15-year old girl. Hernandez was charged with four counts of Aggravated Luring a Minor for Sexual Exploitation and pled guilty to two counts Amended Attempted Aggravated Luring a Minor for Sexual Exploitation. In January 2019, he was sentenced to 3.5 years in prison, followed by supervised lifetime probation and mandatory registration as a sex offender.

*State v. Kenneth Briles:* Between October 2012 and December 2016, Briles, a former manager of the trading post at USAF-run Fort Tuthill Recreational Center. Briles embezzled approximately \$114,556 from the recreation center. In February 2019, Briles plead guilty to Theft and was later sentenced to six months in jail, followed by four years of supervised probation. He was also ordered to pay restitution in the sum of \$96,457.



*State v. Leah Ann Chavez:* Chavez was the appointed clerk for the Town of Pinetop-Lakeside. Chavez was charged with ten felony counts including Theft, Forgery and Misuse of Public Monies. The investigation revealed that Chavez took \$8,825 in cash from the Town in five separate transactions during July and August 2016. She also used a town credit card for an additional \$16,482 in personal purchases from April to September 2016. Chavez is also alleged to have taken \$9,940 in public funds in August 2016, to pay for personal purchases on the town credit card. In July 2018, Chavez pled guilty to Theft and Misuse of Public Monies and was sentenced to one year in prison, followed by four years of supervised probation. She also was ordered to pay \$32,334 in restitution to the Town.



*State v. Daniel Barraza Nevarez:* AG Special Agents and Scottsdale Police Department received information alleging that forged property transfer deeds had been recorded in the Phoenix area beginning around November 2016. The true home owners advised agents that they did not authorize the transfer deeds. Nevarez filed a series of forged quit-claim deeds with the Maricopa County Recorder. These deeds purported to transfer ownership of several single-family homes to “Jose Luis Yanez.” It is suspected that Nevarez transferred ownership of at least 18 different homes using forged deeds. Nevarez contacted lenders attempting to take out cash loans on those properties. Nevarez was indicted on various counts of Fraudulent Schemes and Artifices, Money Laundering, Forgery and Criminal Impersonation in connection with the alleged scam designed to defraud homeowners and lenders. In October 2018, he pled guilty to Fraud Schemes and Artifices and Money Laundering and was sentenced to eight months in jail, followed by seven years of supervised probation. He was also ordered to pay \$21,708 in restitution.

*State v. Karen Hartwell:* Hartwell owned and operated a business that provided compliance testing and water treatment serviced for municipal and private drinking water districts in Arizona. As part of the company’s operation, the company collected drinking water samples from various customer taps and submitted them to an independent lab for testing and analysis. Hartwell received the results of the lab tests and submitted those results to the Arizona Department of Environmental Quality (ADEQ). ADEQ stores and notifies the public of the results by publishing the test results. ADEQ noticed anomalies in the reported results from Hartwell’s company



and referred the case for investigation to the AGO. AG Special Agents secured lab test results from the laboratory itself and compared those results to what Hartwell had reported to ADEQ. In 13 instances, Hartwell reported test results that were negative for bacteria; however, the tests were positive for bacteria in the drinking water. Agents contacted Hartwell who admitted that she changed the test results using a computer program and then submitted the modified

results to ADEQ. Hartwell showed agents how she modified the test results by reenacting the forgery on her laptop. One of the affected customers, Rancho Sierrita Well Association, experienced an e-coli outbreak in their drinking water as a direct result of Hartwell’s actions. They had to re-line their water tank due to the outbreak. In March 2019, Hartwell was convicted of Fraudulent Schemes and Artifices and sentenced to eight months in jail, followed by two years of supervised probation. She was also ordered to pay a fine of \$10,000.





*State v. Hans Burnett:* Burnett worked as a foreman at the City of Cottonwood Water Testing Laboratory. Burnett instructed his subordinate employees to modify test results and re-write the paperwork associated with Cottonwood's drinking water compliance samples. The altered results were submitted to the ADEQ as part their compliance obligations. Coliform is a category of bacteria that drinking water must be tested for on a regular basis. Fortunately, not one person is known to have been sickened as a result of the altered test results. In October 2018, Burnett pled guilty to Criminal Damage and was sentenced to 60 days in jail, followed by three years of probation and 120 hours of community service. He was also ordered to pay \$15,000 of restitution.

*State v. Robert Aguayo:* Aguayo operated IGot Oil Company, LLC which claimed to offer investment opportunities for oil wells in Oklahoma. Between January 2016 and February 2018, Aguayo solicited investments from 48 individuals totaling \$4.75 million dollars. The investigation revealed that the oil wells in Oklahoma were not in production or were not producing oil as Aguayo had represented to the investors. To maintain his scheme, Aguayo used new investor funds to pay earlier investors. Investors were from Arizona, California, Georgia, Idaho, Illinois, Massachusetts and Texas. In April 2019, Aguayo was convicted of Fraudulent Schemes and Artifices and Theft. He was sentenced to five years in prison, followed by seven years of supervised probation. He was also ordered to pay restitution in the amount of \$2,698,023.

## Healthcare Fraud & Abuse Section

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

### Overview of Accomplishments

In September 2018, the AGO received formal notification from the United States Department of Health and Human Services (US-HHS) that HCFA continues to meet federal requirements for the operation of a State MFCU. The recertification process enabled HCFA to receive \$3.3 million dollars in federal funding for FFY2019 continued operations.

In early 2019, US-HHS published its MFCU statistical summary for FFY2018, which listed the number of indictments obtained by each of the nation's 50 MFCUs. Adjusting for differences in staff size, Arizona's HCFA emerged as the second most productive of the MFCUs in obtaining criminal indictments.

HCFA staff continues to partner with local and federal law enforcement agencies to pursue criminal investigations. HCFA maintains an active partnership with the other principal law enforcement agencies investigating prescription drug crimes, including DEA, Federal Bureau of Investigations (FBI), HHS-OIG and municipal law enforcement agencies in Tucson, Phoenix, Gilbert and Mesa.

In addition to working collaboratively with federal and local law enforcement agencies, HCFA regularly receives referrals from state health care licensing agencies. The referrals have led to the filing of criminal charges against licensed health care professionals engaging in illegal drug diversion in Arizona. HCFA saw an increase in direct referrals from two hospital groups in FY19.

During FY19, HCFA has embarked on two extraordinary collaborative efforts in the areas of investigation and prosecution:

1. HCFA became one of the few MFCUs in the country to place a Special Agent within a local DEA office. The experienced agent works under the direction of the DEA Drug Diversion Task Force supervisor. This partnership has created a seamless process for prosecutors to receive criminal case submittals from the Task Force.
2. The US-HHS OIG selected HCFA for placement of one of its HHS-OIG Special Agents. The HHS-OIG agent works under the direction of SIS Supervising Special Agents assigned to HCFA. Not only does this partnership yield an additional experienced investigator, it also gives HCFA staff immediate access to an array of federal health care data. In addition, HCFA staff is able to seek deployment of specialized federal personnel, such as computer forensic agents for joint investigations.

These two efforts are the epitome of collaborative partnerships, and affords the AGO a day-to-day collaboration with key law enforcement agencies engaged in front-line federal criminal investigative efforts against the illegal distribution of prescription pain pills through corrupt health care providers.

During FY19, HCFA received 159 allegations/complaints regarding fraud, patient abuse and the financial exploitation of vulnerable adults. As a result, 129 new cases were opened for full investigation, including 109 fraud cases and 20 patient abuse/financial exploitation cases. HCFA charged 100 defendants and sentenced 72 defendants.

HCFA also participated with other states' MFCUs and the United States Department of Justice in 55 civil cases that targeted national health care and pharmaceutical companies alleged to have engaged in improper trade practices. In FY19, six cases reached settlements. As a result of HCFA's participation, \$6,340,085 was recovered from these companies and returned to the government, with \$1,996,692 provided directly to the Arizona AHCCCS program and \$4,343,393 returned to the federal government.

## Major Cases

*State v. Amanda Doyle, et. al.:* This case began when the staff at a doctor's office in Bullhead City, Arizona, discovered their office employee, Doyle, had been creating fictitious patient profiles within their office's medical records database. The purpose for her computer tampering was to facilitate the creation of phony prescriptions for opioids, which she then distributed to members of a Mohave County drug ring. In June 2019, Matthew Solari, the last member of the seven-person illegal drug ring, was sentenced to 2.5 years in prison.

*State v. Gaven Robel:* Robel was arrested in October 2017 for his involvement in the Mohave County pill ring. Robel and six other co-defendants used phony prescriptions to collectively acquire thousands of Oxycodone pills over several months in 2015. While in custody for this offense, Robel attacked and killed his cellmate. As the victim lay unconscious on the floor, other inmates observed Robel, who encouraged the inmates to watch him, repeatedly stomp on the victim's head and neck before jumping off the top bunk onto the victim's head. The criminal investigation was conducted by the Mohave County Sheriff's Office. The Mohave County Attorney's Office conflicted the prosecution of Robel to the AGO. In February 2019, Robel pled guilty to 2nd Degree Murder and Fraudulent Schemes and Artifices. He was sentenced to an aggravated term of 21 years in prison, followed by seven years of supervised probation with specific terms regarding mental health to begin upon his release.

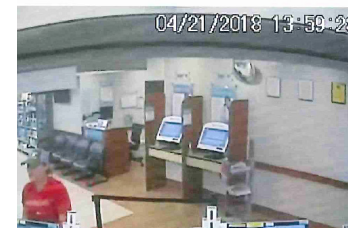


*State v. David Henry Meyer:* Meyer was an independent contractor who worked for an AHCCCS-funded transportation company in Tucson, where his job assignment was to transport AHCCCS clients to and from their health care appointments. In 2017, the company's owner discovered that Meyer had submitted numerous phony travel reimbursement claims as part of a scheme to defraud the AHCCCS program of over \$100,000. Meyer admitted to having forged clients' signatures and submitting fraudulent claim forms. In March 2019, Meyer was sentenced to 2.25 years in prison and ordered to pay restitution of \$100,782 to AHCCCS.

*State v. Jessica Wise & Joseph James:* Along with local and federal agencies, AG Special Agents investigated Chandler medical assistant Wise and her husband, James, for two schemes in which she improperly acquired forged prescriptions from her two health care employers. She illegally obtained over 7,000 pills of Oxycodone. The investigation found that James was selling the pills on the street. The illegal activity continued while the couple was awaiting trial. In February 2019, Wise and James each pled guilty to two counts of Obtaining a Narcotic Drug by Fraud. Wise was sentenced to 2.5 years in prison and James was sentenced to 3.5 years in prison. Wise and James were separately ordered to pay \$500 in investigative costs to HCFA.



*State v. James Michael Russo:* AG Special Agents discovered that Russo, the CEO of the non-profit corporation Visions of Hope, Inc., had been involved in embezzling funds from the corporation. Russo was charged with seven fraud scheme related offenses. Visions of Hope's board members had initiated a review of their corporation's finances after a State background check uncovered a



prior felony conviction that Russo never disclosed when he was hired. Russo was asked to resign. The board also ordered a subsequent financial review that revealed Russo had defrauded the Medicaid-funded organization whose mission was to provide behavioral health services to the State's vulnerable population. In January 2019, Russo was sentenced to 2.5 years in prison and ordered to pay \$9,972 in restitution to AHCCCS.

*State v. Brandi Marie Egnash:* HCFA was notified by the State Board of Nursing that Egnash failed to inform her employer, MD Home Health, that her license to practice as a Registered Nurse in Arizona had been revoked. Egnash continued to work as a Registered Nurse for ten months after her license was revoked which was the basis for several criminal charges. In January 2019, she pled guilty to Fraudulent Schemes and Artifices and was sentenced to 12 months in jail and ordered to pay \$55,400 in restitution.

## Office Of Victim Services

The mission of the Office of Victim Services (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 city law enforcement, custodial, prosecutorial and correctional agencies, as well as courts, both adult and juvenile, who have duties and responsibilities established by Arizona's victims' rights laws.

### Overview of Accomplishments

#### Advocate Program

OVS continues to provide services to victims of various crimes in cases investigated and prosecuted by the AGO, as well as to victims in cases on direct review or under capital appeal. In FY19, the investigation-based advocates provided over 7,500 services to more than 1,000 victims. The prosecution/appellate advocates provided over 43,000 mandated and over 86,000 non-mandated services to more than 10,000 victims.

OVS continues to surpass expectations in terms of victims served and services provided by the Advocate Program Staff. During FY19 the Advocate Program consisted of one Advocate Program Manager, seven prosecution-based advocates (including an Advocate Supervisor), two investigations-based advocates and Advocate Assistants located in the Phoenix and Tucson. In FY19, OVS increased the number of victims served by 19.73%, serving 1,602 more victims with an average of 228 more victims per prosecution advocate. Advocate Program staff, despite the increase in victim caseloads, continue to provide a high number of both mandated and non-mandated services to victims. Mandated services to victims are required by Arizona's Victims' Bill of Rights and statutes, experienced an increase of 28.46% by providing 43,178 mandated services. Likewise, non-mandated services, those that promote the overall healing and sense of justice for victims, experienced an increase of 16.18% by providing 86,126 non-mandated services. The increase in services reflects both the increase in the number of victims receiving services from advocates and the number of overall services. On average a prosecution-based advocate served 1,353 victims a month while the program maintained a victim satisfaction rate of 4.5/5.0. These numbers all demonstrate the high level of dedication and professionalism of our advocates.

#### Agency Support Team

The Agency Support Team (AST), nationally recognized for its innovative and effective work, continues to lead statewide efforts to promote uniformity and efficiency with victims' rights compliance through its various support programs to criminal justice agencies. During FY19, the AST lead and participated in nearly 150 task forces, committees and commissions, conducted six audits, provided over 2500 technical assistance services and conducted 84 victims' rights presentations to over 2,000 participants. AST also reviewed 41 allegations of victims' rights violations, distributed over 325,000 victims' rights forms to 127 law enforcement agencies and dispersed over \$2.2 million dollars to 56 criminal justice agencies to support their mandated victims' rights services.

As part of its education efforts, AST created a criminal justice simulation activity, an innovative approach to victims' rights training that has been presented statewide and requested on a national level that tracks a victims' journey through the criminal justice system. Using the activity, participants follow an adult felony case through the criminal justice system while identifying applicable victims' rights statutes in their pursuit of



justice. This concludes with a video created by OVS that includes three victims who experienced various forms of victimization. They discuss the challenges they faced, what rights were important to them and what advocates and other justice providers can do to help make their experiences better.

As a direct result of the efforts of the entire AST, OVS has been able to identify and address systemic victims' rights issues throughout Arizona. OVS has observed positive changes and heightened awareness of victims' rights that have permeated throughout Arizona's criminal justice system. Such changes include: increased awareness of procedural issues in limited jurisdiction courts related to misdemeanor cases; victims' rights training for personnel; review and revision of agency policy and procedures; review and revision of training documents and changes in daily practices related to the provision of victims' rights.



## Major Cases

*State v. Eugene Tucker*: Tucker was convicted for the 1999 murder of a woman he had been dating, her roommate and her roommate's girlfriend. He was sentenced to death in 2005 and has filed a lengthy habeas petition. This case has had only one opted-in victim for the last several years, the aunt and court-appointed lawful representative for one of the murdered victims. The defense team recently requested the AGO contact the victims to submit to a defense interview. The list of victims the defense wanted to interview included the opted-in victim and three others previously unknown to OVS. Using old contact information from the Maricopa County Attorney's Office, the advocate worked with AG Special Agents to search for more current information. The advocate sent a letter requesting a response to the most recent address for all of the victims. The mother of one of the murdered victims responded; however, the advocate needed clarification. The advocate tried several of the numbers and email addresses for the victim, but was unable to reach her by phone or email. The advocate scheduled a time to go to the victim's house with a Special Agent to clarify the victim's response and provide services. The advocate was able to further explain the defense's request and the victim's rights pertaining to the request. The advocate answered questions regarding the inmate's status on death row, the pending habeas petition and talked about what the family had gone through since the crime and their fears regarding the appeal. The sister of the deceased victim, only seven when the crime occurred, was at home and asked to be opted-in as well. The advocate and the victims talked about the deceased victim's son, who was an infant at the time of the crime, and his options for opting in or just checking in with the AGO now and then. The advocate was also able to get current contact information for the other out-of-state family members.

*State v. Joshua Bouchard*: The victim contacted the AGO to report she had been scammed in a telemarketing scheme for the second time. She was more embarrassed about being duped again than she was about the actual crime. The advocate advised her that she was not alone when it comes to being scammed several times and, because she was a previous victim of a scam, the chances of more people trying to scam her likely will increase. The victim is outgoing and wanted to be involved with the investigation as much as possible. Unfortunately, she had problems with her bank concerning the funds that were pilfered and asked the advocate for assistance. The advocate sent a letter to the president of her bank explaining that she was a victim in a case being investigated by the AGO. Although there were no guarantees as to what the bank would do, the victim was thankful for the letter. While she was doubtful she would get any reprieve from the bank, but said it was worth the effort. The advocate

assured the victim that he would assist her in any way he could. The victim later contacted the advocate after she received a letter that the case was declined by the prosecutor. After discussing this matter with the investigator, it was determined that the prosecutor declined the case because the suspect was implicated in another crime that the prosecutor wanted to pursue. The advocate encouraged the victim to contact the prosecutor to confer on the decision which resulted in the victim be included in any larger case brought by the AGO.

### National Crime Victims' Rights Week

In April 2019, the National Crime Victims' Rights Week was showcased by a statewide event. This event recognized individuals and/or groups in Arizona who have made substantial contributions to victims' rights. This event was planned and presented by a collaboration of seven agencies: the AGO, Arizona Governor's Office, Maricopa County Attorney's Office, Department of Corrections, Department of Juvenile Corrections, DPS and the Arizona Criminal Justice Commission. Attorney General Mark Brnovich personally recognized four outstanding individuals and/or groups in front of approximately 350 attendees.



**National Crime Victims'  
Rights Week** | **APRIL 7-13  
2019**





OVS Staff  
2019 Victims' Rights Week Recognition Event, April 10, 2019  
El Zaribah Shrine Auditorium, Phoenix, Arizona



Mesa Police Department Lieutenant Aaron 2019  
Distinguished Service Award - Innovative Practices



Maricopa County Adult Probation Department Officers Laura  
Thomas and Clint Hill  
2019 Distinguished Service Award – Service Coordination



Theresa Warren  
Alice's Place  
2019 Distinguished Service Award – Leadership



Victim Witness Services for Coconino County  
2019 Distinguished Service Award – Direct Services

## Southern Arizona White Collar & Criminal Enterprise Section (SAWCCE)

SAWCCE prosecutes all criminal cases under the AGO's statutory jurisdiction. SAWCCE specializes in white collar fraud investigations and prosecutions including securities and investment fraud, business embezzlement, AHCCCS and DES public benefits fraud, identity theft, money laundering and other economic-based crimes. SAWCCE also concentrates on anti-Cartel prosecutions of criminal enterprises comprised of international, interstate and Arizona-based drug traffickers responsible for smuggling heroin, Fentanyl, cocaine, methamphetamine, marijuana and other illegal drugs, weapons and cash across Arizona's southern border and street gang related prosecutions. Additionally, SAWCCE investigates and prosecutes public corruption cases involving misuse of public funds, conflict of interest, obstruction of justice and bribery. SAWCCE also prosecutes crimes involving Internet-related sexual exploitation of children and associated abuse charges and dedicates an attorney to specialized elder and vulnerable adult financial exploitation and abuse cases. SAWCCE further assists local county attorney offices by prosecuting conflict cases pursuant to Arizona law.

SAWCCE works proactively with AG Special Agents, local, state and federal law enforcement agencies from investigation through conviction. This approach, known as vertical prosecution, relies on specialized prosecutors who become experts in particular areas of law. Law enforcement from federal, state and local agencies choose to bring cases to SAWCCE. SAWCCE is regularly tasked with assisting both law enforcement and county attorney offices on complex legal issues. As a result, SAWCCE is a significant component of southern Arizona law enforcement.

Additionally, in partnership with the University of Arizona, James E. Rogers College of Law, SAWCCE manages a six credit, year-long 38(d) clinical extern program for select second and third year law students who want to pursue prosecution careers after graduation. Students in the intensive program complete 300 hours in the office and in court under close supervision of SAWCCE's experienced criminal prosecutors.



### Overview of Accomplishments

In FY19, SAWCCE filed new cases on 234 defendants, while managing 584 total defendants in active litigation and 282 defendants were closed. For criminal enterprise drug interdiction, total seizures with approximate wholesale values included: methamphetamine – 281.23 lbs. valued at \$646,837; heroin – 733.37 lbs. valued at \$9,480,525; cocaine – 22.4 lbs. valued at \$248,948; marijuana – 560.37 lbs. valued at \$204,535; Fentanyl – 1190 pills valued at \$23,800 and 9.63kg valued at \$308,160; and Oxycodone – 500 pills valued at \$5,000. SAWCCE also assisted 635 economic crime victims with court-ordered restitution of approximately \$1,010,493 and obtained approximately \$578,497 in court-ordered fines to be paid by defendants.

### Major Cases

*State v. Sean Player Dixon et al.*: Homeland Security Investigations (HSI) agents, with cooperation from DEA agents and Pima County Sheriff's Department detectives, began a joint investigation of Dixon and his DTO in August 2015. The investigation, using court authorized wiretaps, revealed that the organization used body carriers to



smuggle pounds of heroin into the United States nearly every week. Once members of the organization obtained the heroin, they transported portions of it to East Coast drug dealers for sale. After the heroin was sold, the organization would use straw bank accounts to launder the illicit proceeds. The organization laundered more than \$816,000 in illegal drug proceeds. Many of the bank account holders and other members of the organization falsely omitted their true income on government assistance applications resulting in the fraudulent receipt of \$82,038 in AHCCCS and Food Stamp Benefits. Members of the DTO also sold pound quantities of heroin, cocaine and crack cocaine to Tucson-area drug dealers and users on a weekly basis by using a network of stash houses, often where children lived, to manufacture and store the drugs. Members of the organization also smuggled firearms into Mexico. Approximately 22 lbs. of heroin, 0.5 lbs. of crack cocaine, 1.5 lbs. of cocaine, eight firearms and \$353,000 in cash were seized during the course of the investigation. The investigation led to the conviction of 34 members of the organization, including Dixon, who was sentenced to 7.5 years in prison for seven drug felony offenses. He was also ordered to pay restitution of \$82,038 to AHCCCS and DES.



*State v. Jimmy West:* In September 2017, the Board of Directors of the Tucson Lesbian and Gay Alliance, dba Tucson Pride Board, unexpectedly did not have enough money to host its annual concert and fundraiser. Suspecting the money had been embezzled by West, their former president, the Board contacted the Tucson Police Department. A subsequent investigation revealed that between March and September 2017, West embezzled over \$20,000 by using both the Pride Board's bank account and credit card to withdraw cash from ATMs and to make personal purchases. West began stealing the day the bank account was opened and manipulated the Pride Board's books to cover his theft. In August 2018, West pled guilty to Theft, was sentenced to four years of probation and ordered to pay \$21,691 in restitution.



*State v. Cody Shave, et al.:* In August, 2017, a 19 year old man called the Pima County Sheriff's Department to report that he had been assaulted. He told detectives that he had been confronted at gun point and ordered to strip naked and walk down a residential street in Catalina, Arizona. The kidnapping culminated when the abductors pistol-whipped the victim, stealing his wallet and clothing. Despite the theft, the primary purpose of the kidnapping seemed to be to humiliate the victim. The victim identified some of his assailants and video surveillance from a nearby business helped detectives identify the remaining suspect. Ultimately, in August 2018, Cody Bennet, the driver for the other two assailants, pled guilty to Attempted Armed Robbery. Bennet was sentenced to three years of probation and ordered to complete 50 hours of community service. The other two defendants, Shave and Alberto Aguirre, pled guilty in September 2018 to Attempted Armed Robbery and were sentenced to 2.5 years and 3.5 years in prison respectively. The victim had an opportunity to confront his assailants in court and thanked the

prosecutor for helping him begin to feel safe again.

*State v. Jessica Ann Marie Bracamontes et al:* Bracamontes met a Tucson man at a Tucson convenience store for a drug deal in July 2017. Unsatisfied with the transaction, Bracamontes kidnapped the victim at gunpoint and took his jewelry and cellphone. Bracamontes joined other accomplices, including Francisco Esteban “Cisco” Fierros, and took the victim to a Tucson motel. Once inside a room, they beat the victim. At some point, Fierros picked up a machete and punched the victim until he placed his right index finger on a bedside dresser. Bracamontes filmed the assault on her cellphone as Fierros chopped off the victim’s finger. Bracamontes kept the finger, telling the victim, “We’re keeping it so it serves as a reminder to you,” and kicked him out of the hotel. The victim went to Banner University Medical Center to be treated for his injuries. In September 2018, Bracamontes pled guilty to Kidnapping and Aggravated Robbery and was sentenced to 10.5 years in prison. In January 2019, Fierros pled guilty to Kidnapping and Aggravated Assault Causing a Serious Physical Injury and was sentenced to 18 years in prison. The other accomplices also pled guilty and were ordered to serve the following sentences: Richard “Happy” Marquez was sentenced to eight years in prison; Jorge Miguel Chavez was sentenced to 6.5 years in prison and Francisca Leann Gatter was sentenced to 100 days in jail, followed by three years of probation.

*State v. Richard Betonio:* The victim met Betonio while he was completing a tile installation at her home. Betonio convinced the victim that he was starting a high-end home remodeling business with a rich partner from Israel and her house would be the ideal showroom. To prepare for the supposed remodel, Betonio convinced his target that he needed to put her tools, jewelry and several guitars into storage. Betonio instead pawned the items at a variety of pawn brokers. With delays mounting and money running short, Betonio blamed financial problems in Israel. He convinced the victim that she would become an employee of the remodeling company, but she needed to provide money for payroll and other expenses. Additionally, Betonio had the victim open several lines of credit at furniture and department stores in order to acquire items for both the project and the company. The victim paid Betonio \$84,000 in checks, \$25,100 with her debit card and she opened 18 credit lines with charges on them for \$66,000. It was all part of Betonio’s scheme. Betonio told the victim that she had nothing to worry about because he and his partner would pay all of her bills. That never happened and the victim fell behind on mortgage and car payments. Ultimately, she became financially dependent on Betonio and her car was repossessed. The Oro Valley Police Department investigated the case and recovered some of the victim’s pawned items. In December 2018, Betonio pled guilty to Trafficking in Stolen Property and Fraudulent Schemes and Artifices. He was sentenced to one year in jail followed by seven years of probation.



*State v. Juan Manuel Islas et al:* The Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) opened an investigation into a criminal organization that was trafficking drugs and firearms throughout Southern Arizona in late May 2015. Initially, ATF agents started with purchasing firearms from Thomas Baile, a defendant with previous felony convictions. From there, ATF uncovered a web of individuals dealing methamphetamine and heroin in Tucson. Over the next several months, ATF purchased heroin from Islas and three other defendants. After further investigation, agents discovered that Jaramillo, who owned and operated a Boost Mobile Store, was Islas’ heroin supplier. In April 2018, a jury found Islas and Gilberto Saul Jaramillo guilty of multiple counts of Possessing, Transporting and Selling Heroin, Money Laundering, Conspiracy and Illegally Conducting an Enterprise. Islas was sentenced to 10.5 years in prison. Jaramillo was sentenced to six years in prison, followed by four years of probation. The other five defendants had previously pled guilty and were sentenced.

*State v. Daniel Pacheco:* Pacheco was hired for light landscaping work around the victims' home. With the victim's husband receiving cancer treatment, Pacheco convinced the victim to hire him for additional projects. Pacheco claimed to have installed a new roof, an irrigation system and to have repaired the driveway. When the victim began to notice deficiencies in the completed work, she had to call Pacheco back to the house to repeatedly resolve roof leaks and other problems. Nothing was fixed, but Pacheco charged the victim regardless. She eventually called a handyman who indicated that the roof was improperly installed and could not be fixed. A roofing company confirmed that the victim would need a new roof. When the victim reviewed her records, she realized she had paid Pacheco over \$100,000 in checks between February 2017 and January 2018. Unfortunately, the victim still had to pay \$11,000 to replace the improperly installed roof. Ultimately, the victim filed a complaint with the Arizona Registrar of Contractors because Pacheco was an unlicensed contractor. In June 2019, Pacheco pled guilty to Theft. He was sentenced to one year in prison, followed by five years of probation. He was also ordered to pay \$92,165 in restitution.



*State v. Jay Edward Miller:* In November 2016, the Tucson Police Department was operating an online undercover operation targeted at men luring minors for sexual conduct. An undercover detective was contacted by a man who stated his name was "Rick Nelson." Nelson solicited the undercover officer who was posing as an underage girl, for various sexual acts in exchange for money. Through investigation, detectives traced Nelson and determined he was actually Jay Edward Miller, a 62-year old man living in San Tan. Tucson detectives and the FBI received additional information that Miller may have been luring other children. A search warrant was served at Miller's residence, which found additional evidence showing that he was surreptitiously taping his stepdaughter in her bedroom. In February 2019, Miller was convicted of Luring a Minor for Sexual Exploitation in the Tucson Police Department case and was sentenced to six years in prison, followed by lifetime supervised probation and mandatory registration as a sex offender. He will be transferred to Pinal County to face Surreptitious Taping and Viewing charges relating to his stepdaughter. He will then be transferred to Maricopa County, where he was charged in connection with another incident involving luring a minor.

*State v. Micah Layton Owens-Forney et al:* Owens-Forney and Lubre Ray-Shaun Peeler were stopped on Interstate 10 by a DPS K9 Trooper in the Tucson area. During the stop, the Trooper's dog alerted to the odor of narcotics. That led to a search and the discovery of 99 pint bottles of Promethazine with Codeine Cough Syrup, a narcotic drug valued at about \$150,000. During the search, Peeler attempted to flee, running across three lanes of highway traffic, narrowly escaping being hit by a car. DPS Troopers later found Peeler hiding in dense vegetation near the freeway. In February 2019, Owens-Forney pled guilty to Transportation of a Narcotic Drug for



Sale. In April 2019, Peeler also pled guilty to Transportation of a Narcotic Drug for Sale. Both were sentenced to seven years of probation.

*State v. Steve Leslie Marshall:* From 2014 through 2017, Marshall was president of the Marana Broncos Youth Football Organization, a charity non-profit youth football and cheer organization for children between five and 13-years old. In early 2017, a parent complained about Marshall's management of team funds and requested documents corroborating Marshall's accounting. Marshall initially refused to produce documentation and then produced



documents that raised significant questions about his money management. The Oro Valley Police Department (OVPD) began investigating Marshall for embezzlement, and concluded he had used a significant amount of team money for his personal gain. OVPD determined that Marshall made approximately \$30,000 in personal expenditures during his tenure as president. For example, Marshall spent over \$2,900 to pay his monthly rent, \$1,000 on personal dental expenses, \$800 on for auto repairs and \$550 for a trip to California. In June 2019, Marshall was convicted of Fraudulent Schemes and Artifices and sentenced to 120 days in jail, followed by seven years of probation. Marshall was ordered to repay the Broncos \$30,000 in restitution.



*State v. Gerald Lee Brenner:* Brenner advertised various mobile and manufactured homes on Craigslist. He convinced 13 people to pay him money for these homes, in part by using his status as a church pastor. In every case, after receiving payment, Brenner failed to deliver the home. AG Special Agents partnered with the Pima County Sheriff's Department to investigate. They learned Brenner had done this while on probation for a prior fraud conviction. Further, they learned Brenner never actually owned any of the homes he had purported to sell. Brenner stated that he had taken the victims' money to gamble at a Tucson casino. In October 2018, Brenner was sentenced to 7.5 years in prison and ordered to pay over \$56,000 in restitution to his many victims.

*State v. Paul Wells:* The FBI opened this investigation after PayPal had suspended Wells' accounts based on customer complaints that he was selling counterfeit DVDs. Agents then interviewed six customers in Tucson whom had bought DVDs from Wells, collected any available DVDs and determined that all but one were counterfeit. Agents from HSI in El Paso, Texas, were concurrently investigating Wells because Customs had been seizing DVD shipments from China addressed to Wells since 2011. After the initial seizures, Wells started sending DVD shipments to a UPS store in El Paso, with a forwarding address to him in Arizona. Between January 2011 and July 2014, the FBI and HSI determined that Wells sold 19,004 counterfeit DVDs primarily through eBay and, to a lesser extent, his online store [www.mylittlewebshop.com](http://www.mylittlewebshop.com). In total, Wells' gross sales totaled \$411,945 to 17,301 different customers. In September 2018, Wells pled guilty to Fraudulent Schemes and Artifices and Unlawful Copying or Sale of Sounds or Images from Recording Devices. He was sentenced to three years of probation. He was also ordered to pay \$15,000 in restitution to the Motion Picture of Association of America before sentencing.



*State v. Mario Hiram Celaya et al:* Agents from DEA received a tip in early 2015 that a Bisbee resident was mailing marijuana to the East Coast. They tracked packages sent by Celaya and other members of Celaya's DTO to Georgia, where agents made controlled deliveries. Working with the AGO, DEA agents also discovered that members of the organization were receiving large cash deposits from Georgia and subsequently withdrawing the cash in Arizona. Agents were able to match marijuana shipments from Bisbee with cash deposits from Georgia. Seven defendants were charged with more than forty counts including Transportation of Marijuana for Sale, Money Laundering, Illegally Conducting a Criminal Enterprise and Conspiracy. The investigation led to the conviction of seven members of the DTO, including Bernadette Martinez, who was sentenced in November 2018 to one year in prison, followed by three years of probation. Joseph Rivera was sentenced in September 2018 to three years of probation and ordered to pay a fine of \$5,490.



*State v. Michael Prudhomme*: In November 2016, officers from the Pima County Sheriff's Department investigated the burglary and theft of a car that had been broken into while the owner was in the hospital. The victim's backpack containing his credit card was taken. Weeks later, he received a letter from a credit card company with a new card with Prudhomme's name and learned someone had already charged \$350. In March 2017, another victim reported that her car had been burglarized in her garage and her purse was stolen. Sheriff's detectives identified Prudhomme making purchases on her credit card immediately after the burglary. In April 2017, a third victim reported that his bicycle had been stolen and that he had seen it for re-sale online. Detectives were able to uncover the name of the seller and again identified Prudhomme. In a search warrant on his home and truck, police found evidence tying Prudhomme to the crimes and found stolen mail containing identifying information for additional victims. Prudhomme was charged for all three cases. In June 2018, Prudhomme pled guilty to Taking the Identity of Another, Fraudulent Schemes and Artifices and Attempted Trafficking in Stolen property. He was sentenced to four years in prison.

## Special Investigations Section

The Special Investigations Section (SIS) provides investigative support to prosecutors in the Criminal Division as well as law enforcement agencies throughout the State. SIS provides expertise in specialized areas of the law covered under the AGO's statutory criminal jurisdiction, that are not usually available at other law enforcement agencies. Those areas include vulnerable adult abuse, consumer fraud, drug trafficking, human smuggling, environmental crimes, medical fraud, money laundering, white collar crimes, political corruption, youth tobacco enforcement, antitrust, high technology crimes and foreign prosecution of defendants who have fled to other countries. The Special Investigations Section works closely with federal law enforcement partners, including having Special Agents assigned to federal taskforces that combat racketeering offenses at the state and federal levels.

### Overview of Accomplishments

In FY19, SIS opened 209 cases. SIS Major Fraud Units devoted resources to advance public corruption cases this year. Special Agents work with Criminal Division prosecutors in the FSP, FRS, HCFA and SAWCCE and successfully met unprecedented investigative demands. In addition, Special Agents work with attorneys in another section assisting with Consumer Fraud litigation.

AGO initiatives continue to target the dismantling of the financial structures of drug trafficking organizations and have resulted in record-setting increases in asset forfeitures. Statistics also indicate calls for assistance from the public and other law enforcement agencies were at high levels in FY19

- Law Enforcement Assists 54
- TRAC – Financial Inquires 320
- Duty Agent Contacts 4,130

### Major Cases

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

## Arizona Financial Crimes Task Force (AFCTF)

*State v Antwan Mack and Alejandra Beria:* AG Special Agents assigned to the AFCTF and other participating agencies participated in this investigation. Financial records were cross-referenced with information from a known human sex trafficking advertisement database. This allowed agents to have immediate intelligence on human sex trafficking networks. Mack and Beria were arrested and charged with Criminal Enterprise, Money Laundering and Prostitution related offenses for their participation in a multi-state prostitution case that was developed entirely from a digital investigative process. The case was one of the first of its kind in the country. Mack and Beria were sentenced to three years of supervised probation.



*State v Yong Moore, et al:* Louis “Bud” Moore and his wife, Yong Moore, were investigated for their roles in operating five illicit massage businesses that were operating as brothels. The charges investigated were Operating a Criminal Enterprise, Money Laundering and Operating a House of Prostitution. During the course of the investigation, agents learned that the enterprise had generated over \$1.8 million dollars in criminal proceeds. Many of the records pertaining to the running and operating of the illicit business were discovered when a search warrant was executed on her husband’s law firm. In November 2018,

Yong Moore pled guilty Illegal Control of Enterprise and Attempt to Commit/Reside House Prostitution and was sentenced to three years supervised probation.

## Major Fraud Units (MFUI & MFU2)

*State v. Robert Aguayo:* Special Agents investigated the case along with the U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI). Aguayo operated IGot Oil Co, LLC, which claimed to offer investment opportunities for oil wells in Oklahoma. He solicited investments from 48 individuals totaling \$4.75 million between January 2016 and February 2018. The oil wells were not in production, nor producing oil as Aguayo had represented to the investors. The investigation revealed that Aguayo used new investor funds to pay earlier investors who were from Arizona, California, Georgia, Idaho, Illinois, Massachusetts and Texas. In April 2019, Aguayo pled guilty to Fraudulent Schemes and Artifices and several Theft charges. He was sentenced to five years in prison followed by seven years of probation. He was also ordered to pay \$2,698,023 in restitution.



*State v. Ramon Diaz:* A victim reported to Special Agents that he was being extorted for \$77,000 resulting from a false accusation made by someone named Diaz. Diaz threatened to release the damaging allegations on social media accounts if the victim did not pay him. Although the accusations were false, the victim complied, apparently believing the false information would be devastating to his business. The investigation revealed that Diaz may have started a friendship with the victim with the intent to perpetrate the scheme and extort money. In July 2018, Diaz pled guilty to Fraud Schemes and Artifices and Theft and was sentenced to five months in jail. He was also ordered to pay \$104,284 in restitution.

*State v. John Wee:* Wee conducted an affinity-based fraud scheme that consisted of multiple separate offenses. Wee solicited members of his church along with family and friends to invest in a fraudulent car flipping business. He also solicited money to help pay his mother's mortgage, medical bills and his legal fees. Wee conducted his fraud schemes over several years during which time he stole approximately \$222,060 from numerous victims. In May 2019, Wee pled guilty to Forgery and Fraud Schemes and Artifices and was sentenced to six months in jail. He was also ordered to pay \$29,086 in restitution.

*State v. City of El Mirage:* Members of the El Mirage Police Department reported several potential criminal violations by city officials. After investigating the complaints, a potential violation of the issuance of illegal speed camera citations near a school was identified. It was determined that the speed limit in the area of the school decreased from 40 miles per hour to 25 miles per hour based on the apparent belief that the area was a school zone. However, that was not the case, as there was no crosswalk in the speed zone, and the 15 miles per hour drop in the speed limit was in violation of State law. Further, after a member of the police department determined that the speed zone was improper, police continued to issue citations in the speed zone for approximately five months. Insufficient evidence emerged to criminally charge any city official, but the City of El Mirage agreed to reimburse drivers for the improperly issued citations.



*State v JJ McFarland:* Specials Agents assigned to the Internet Crimes Against Children Task Force arrested McFarland for Sexual Exploitation of Minors after a Dropbox account he was using was reported to the National Center for Missing and Exploited Children (NCMEC). Additionally, Special Agents authored and obtained a search warrant for McFarland's residence. The investigation revealed several hundred images depicting minor children on his cellular device. In January 2019, McFarland pled guilty to Sexual Exploitation of a Minor and was sentenced to 12.5 years in prison, followed by lifetime probation and mandatory registration as a sex offender.

## Consumer Fraud Unit (CPA):

*Orangutan Home Services, Inc.:* The AGO obtained a \$150,000 consent judgment against a HVAC installation and maintenance company for calling Arizonan citizens on the "Do Not Call" Registry. Orangutan, which does business in the Phoenix and Tucson areas, admitted to making thousands of illegal telemarketing calls from April 2017 to October 2017.



*Pearl Bridal:* The AGO obtained a \$240,000 consent judgment against a bridal shop and its owners, Erica and Tyson Miltenberger. The Miltenbergers' used false advertising and deceptive practices to collect hundreds of thousands of dollars in pre-payments for wedding dresses, then abruptly shut down the business leaving most of the orders unfulfilled. As part of the conditions of the judgment, the Miltenbergers' are also banned from any future involvement in any apparel-related

businesses in Arizona.

*Bargain Moving, Inc.:* The AGO obtained a stipulated judgment totaling over \$97,000 against Amru Abdalla, Emad Abdalla and their moving company, Bargain Moving, Inc. This judgment resolved the State's consumer fraud and



contempt action against the Abdalla Brothers who repeatedly have violated previous court ordered settlements. After a four-day trial, the Court found that the Abdalla brothers not only violated its prior orders, they also violated the Arizona Consumer Fraud Act. In addition to other injunctive relief, the stipulated judgment permanently bans Amru Abdalla from working in any moving business in Arizona.



*EB Worldwide, LLC:* The AGO obtained a \$451,000 judgment against the Texas-based travel company and its CEO, George Barragan. Operating under the name “Senior Grad Trips,” this company accepted thousands of dollars in payments from Arizona consumers for a group vacation that was cancelled without notice or refund. Specifically, approximately \$40,000 was collected from Cienega High School students and their chaperones for a senior class Disneyland trip that

was abruptly cancelled. The judgment also bans EB Worldwide, LLC and Barragan from selling, advertising or otherwise marketing any vacation packages in Arizona.

### Financial Remedies Unit

Special Agents assigned to FRU completed over 832 follow-up assignments to support civil forfeiture case litigation while concurrently completing criminal investigations to include fraud schemes, vulnerable adult, food tampering, gambling and Social Security fraud.



After a lengthy investigation, a Consent Judgment was obtained pursuant to the Arizona Consumer Fraud Act against Betson Coin-Op Distributing Company, Inc. The settlement arises out of Betson’s sales and leases of Sega Key Master Prize Redemption Machines in locations throughout Arizona, including shopping malls, gas stations, and convenience stores. In the Court-approved settlement with Betson, the company paid \$1,000,000 to the State and agreed not to sell, lease or finance any Key Master or merchandiser game machines with Auto-Percentaging systems in Arizona.

In March 2019, Special Agents assigned to the HIDTA DISRUPT Unit were transferred to the HIDTA MCDUST Unit to combat drug trafficking and money laundering. Since that time, the Task Force completed approximately 12 productive DTOs seizing the follows drugs and assets:

- |                                      |  |
|--------------------------------------|--|
| 148 lbs. Marijuana                   | 19.2 lbs. Heroin                           |
| 195 lbs. Narcotic Cannabis           | 8 lbs. Methamphetamine                     |
| 9 Pints of Promethazine with Codeine | 224 Xanax bars                             |
| 56 lbs. Mushrooms                    | 3.62 grams Methylenedioxyamphetamine (MDA) |
| 8 grams Ecstasy pills                | 7,100 Fentanyl pills                       |
| 4 lbs. THC Resin                     | 2.2 lbs. Cocaine                           |
| \$209,899 United States Currency     | 3 Handguns                                 |
| 3 Rifles (1 which was stolen)        | 8 Vehicles                                 |

In FY19, Special Agents assigned to the Social Security Administration (SSA) Task Force managed 139 disability investigations. SSA investigations start at an administrative-level and involve physical surveillance of individuals



suspected of filing false disability claims. Suspects file claims related to a medical disability preventing them from working. As a result of investigative resources, many suspects are observed conducting activities previously reported to doctors that they could no longer do because of their medical disability. This evidence allows the SSA to revoke disability benefits obtained fraudulently. Of those investigations, Special Agents administratively closed 116 cases, saving the SSA and the State approximately \$7,650,385 in tax payer dollars.

## Youth Tobacco Compliance Program



In FY19, the program conducted 2157 undercover inspections of tobacco retailers overall, resulting in 551 citations issued to clerks and businesses who sold tobacco products to underage youth volunteers. The inspection failure rate for AGO-only inspections rose from 9.8% in FY18 to 13.3% in FY19.

## Tucson Unit (TUC):

*State v. Daniel and Guadalupe R. Luque:* Special Agents worked with personnel from AHCCCS and the DES relating to a fraud scheme involving the business owners of a Tucson magazine publication. An initial inquiry and interview revealed that these individuals owned and operated a publication funded by advertisers and catered to businesses for special occasions such as quinceañeras and awards banquets. AHCCCS and DES confirmed these individuals had received financial and medical assistance and had submitted fictitious statements and documents in order to qualify for government assistance. From 2011 through April 2017, the Luque household had deposited over \$880,000 in cash and checks deposited in various bank accounts, yet omitted this income when applying for state assistance. In April 2019, they both pled guilty to Fraudulent Schemes and Artifices and were sentenced to 60 days in jail, followed by two years of probation and a \$5,000 fine each. They were also ordered to pay \$38,481 in restitution to AHCCCS and DES.

*State v. Iliana Sarai Vasquez:* Special Agents received a request from SAWCCE prosecutors to assist the FBI in an investigation involving a network of individuals identified within a Tucson-based DTO. These individuals, primarily Vasquez's family members, received large structured cash deposits into their bank accounts over several years. They then would withdraw the funds. Agents identified the suspects and confirmed that they also received assistance from AHCCCS and DES. A financial analysis revealed Vasquez received large amounts of cash from unknown out-of-state sources, which determined the individuals were ineligible for financial assistance from the State. In May 2019, she pled guilty to Money Laundering and sentenced five years' probation. She was also ordered to pay \$7,997 in restitution to AHCCCS and \$1,832 to DES. All the other co-conspirators were sentenced in the previous fiscal year.



Division Chief Dawn Northup

## MISSION:

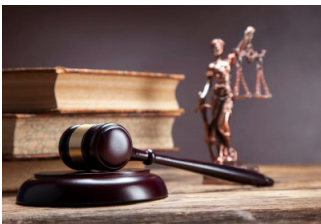
*A dynamic legal team representing many state agencies, boards, commissions and the courts with integrity, dedication and innovation.*

### Division Summary

*The State Government Division consists of ten sections: Agency Counsel; Environmental Enforcement; Education and Health; Employment Law; Liability Management; Licensing and Enforcement; Natural Resources; Public Law; Tax; and Transportation. The Division's sections handle a wide variety of legal matters and provide client advice, legal representation and litigate in administrative, civil and appellate proceedings.*

## Agency Counsel Section

The Agency Counsel Section (ACS) is responsible for providing legal advice and litigation support to approximately 80 state agencies, boards and commissions. ACS is comprised of 17 attorneys and 7 support staff. Its clients include the Arizona state court system, the Departments of Administration, Corrections, Housing, and Juvenile Corrections, the Boards of Equalization and Executive Clemency, the state retirement systems, and the Secretary of State's Office, to name a few.



### Overview of Accomplishments

#### *Election Matters*

*Arizona Libertarian Party, et al. v. Hobbs:* Like other states, Arizona requires candidates for office to demonstrate a modicum of support by gathering a certain number of signatures in order to appear on the ballot. The plaintiffs alleged that Arizona required too many signatures for Libertarian Party candidates, who—unlike Republicans, Democrats, and Greens—did not want Independent voters to sign their petitions. Thus, their “pool” of potential signers was smaller, and so (they alleged) the signature requirements were too burdensome. The district court granted the State summary judgment, and the Ninth Circuit affirmed 3-0.





*De La Fuente v. Hobbs*: The plaintiff challenged Arizona’s signature requirements for ballot access for Independent candidates for president, and also for forming a new political party. The district court granted the State summary judgment.

*Knox v. Brnovich*: The plaintiff alleged that H.B. 2023, which forbids third parties to collect a voter’s early ballot, but allows family members, household members, caregivers, and legally authorized persons to do so, violated federal mail laws and regulations. The district court granted judgment in favor of the State. The Ninth Circuit affirmed 3-0.

## *Other Matters*

*Lynxx v. State of Arizona (Department of Gaming)*: SGD attorneys from ACS, LES, and PLS prevailed on their motion to dismiss Plaintiffs’ suit against the State and Directors of the Departments of Gaming, Liquor, and Revenue alleging the Defendants’ enforcement of the Arizona bingo and gaming statutes violated that the Americans with Disabilities Act and the statutes were preempted by the Supremacy Clause of the United States Constitution. Plaintiffs sought a declaratory judgment finding machines, which the Department of Gaming determined were illegal gambling devices, were actually legally permissible bingo technical aids designed to accommodate employees with disabilities perform their tasks as bingo game operators. The court found the Plaintiffs failed to exhaust administrative remedies, lacked standing to pursue their claims, and failed to state a claim upon which relief could be granted. Plaintiffs did not appeal the decision.

## **Significant Responsibilities**

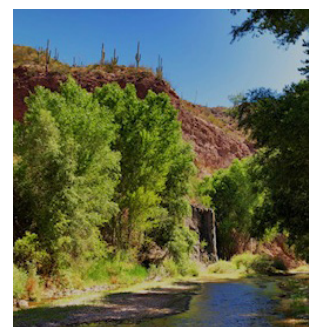
*Bonds*: ACS reviewed 26 projects for Industrial Development Bond funding, totaling over \$2,291,900,000.00.

*Personal Property Leases*: ACS reviewed and approved, as to authority and form, third-party personal property leases for the State with an aggregate value of more than \$9,537,756.00.

*Real property leases/contracts/agreements*: ACS reviewed over 118 leases, contracts and other agreements for various agencies.

## **Environmental Enforcement Section**

The Environmental Enforcement Section (EES) represents the State in civil enforcement actions for violations of Arizona’s environmental laws. EES represents, advises, and defends the Arizona Department of Environmental Quality (ADEQ) in its administration of the State’s environmental laws and delegated federal environmental programs including Arizona’s Aquifer Protection Permitting Program, Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, Solid Waste Management Program, Underground Storage Tanks Program, Water Quality Assurance Revolving Fund (WQARF), and Comprehensive Environmental Response, Compensation, and Liability Act (Superfund Program). EES also advises and represents



the Oil and Gas Conservation Commission (OGCC) and the Arizona State Emergency Response Commission (AZSERC).

## Case Highlights

*Town of Florence v. Arizona Department of Environmental Quality (Florence Copper Mine)*: EES successfully defended a judicial challenge in the Maricopa County Superior Court to ADEQ's decision to issue an aquifer protection permit to Florence Copper for its in situ copper extraction facility. The appellants argued to the superior court that ADEQ violated legal and technical standards and sought to have ADEQ's permitting decision overturned. The permitting decision was previously upheld by the Arizona Water Quality Appeals Board (WQAB). Following extensive briefing and oral argument, the superior court upheld ADEQ's decision.



*Arizona Mining Reform Coalition v. Arizona Department of Environmental Quality (Resolution Copper Mine)*: In an administrative appeal and evidentiary hearing before the WQAB, EES successfully defended ADEQ's decision to renew the Arizona Pollutant Discharge Elimination Permit for the Resolution Copper Mine. The appellants argued that ADEQ did not meet the statutory and rule requirements when it renewed the permit for the Resolution Copper Mine. Following extensive briefings and an evidentiary hearing, the WQAB upheld ADEQ's decision and affirmed the permit.

*Idaho Conservation League v. Environmental Protection Agency (CERCLA § 108(B))*: Through a motion to intervene to the District of Columbia Court of Appeals, EES represented ADEQ when it joined a coalition of states, industry groups, and the United States Environmental Protection Agency (EPA) in successfully defending EPA's finding that new financial responsibility requirements were unnecessary for hardrock mining facilities and would preempt effective existing state law.

## Significant Matters

*Water Quality Assurance Revolving Fund (WQARF) Program*: EES represents ADEQ in its administration and enforcement of the Water Quality Assurance Revolving Fund (Arizona's Superfund Program), which registers sites with contamination from hazardous substances, investigates the liability of potentially responsible parties, and undertakes remediation of soil and groundwater contamination. EES assists ADEQ in obtaining access agreements to conduct remedial work; negotiating settlements and prospective purchaser agreements; recovering remediation costs; and developing effective programs for administration and enforcement.

*Arizona Oil and Gas Conservation Commission*: EES advises the Arizona Oil and Gas Conservation Commission in the administration of its duties. The OGCC holds regular meetings and regulates the exploration and production of oil, gas, helium, carbon dioxide, and geothermal resources in Arizona. The OGCC issues permits for exploration and production wells and inspects those wells for compliance.

*Arizona State Emergency Response Commission (AZSERC)*: EES advises in the Arizona State Emergency Response Commission in the administration of the Emergency Planning and Community Right to Know Act and related programs for emergency notifications of chemical releases.

*Training:* EES provides training to client agencies in environmental law, open meeting law, public records law, and other areas related to environmental law and administrative procedure. EES also participates in training programs through the Western States Project, a consortium of state agencies responsible for the enforcement of environmental laws in the western United States.

## Education and 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 (ADHS), including the Divisions of Operations, the Public Health Divisions of Licensing, Prevention, and Preparedness, and the Arizona State Hospital. 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 State Commission for Postsecondary Education, the Arizona State Board for Charter Schools, the School Facilities Board, and the Professional Practices Advisory Committee.

### Health Unit

Major Case Highlights: State Court

The Health Unit handled six appeals at the Arizona Court of Appeals and responded to one petition for review in the Arizona Supreme Court. The Court of Appeals has issued decisions in four of the cases; all were decided in ADHS's favor.

### Midwife Licensure

ADHS regulates licensed, non-nurse midwives who primarily attend home births absent the supervision of any title 32 health care professionals. Health Unit attorneys provide the legal advice to this program and handle all enforcement-related litigation.

*Cleckner v. Arizona Department of Health Services, 246 Ariz. 40 (App. 2019):* In 2012, the legislature passed H.B. 2247 which authorized ADHS to revise the midwifery scope-of-practice rules. As part of H.B. 2247, the legislature permitted ADHS to consider increasing the scope-of-practice rules for licensed midwives if, after an advisory committee was convened and public meetings were held, ADHS determined that it would be safe to do. ADHS followed the process set forth in H.B. 2247 and adopt revised midwifery licensing and practice rules that went into effect in July 2013. In January 2016, Cleckner and the Arizona Association of Midwives sought declaratory and injunctive relief, claiming that the updated rules were invalid because certain revised rules effectively decreased a midwife's scope of practice. In July 2016, four of the six claims were dismissed as a matter of law and the remaining claims were voluntarily dismissed in October 2017. Cleckner independently appealed the dismissal of two claims, arguing that the revised midwifery rules violated A.R.S. § 41-1030(C) because ADHS had exceeded the authority granted to it by H.B. 2247. Cleckner asserted that under H.B. 2247, ADHS was authorized to only increase the midwifery scope of practice, but the revised rules had decreased the midwifery scope of practice.

After supplemental briefing, the court of appeals held that H.B. 2247 did not limit ADHS's discretion to increase or decrease the midwifery scope of practice and therefore ADHS did not violate A.R.S. § 41-1030(C) when it promulgated the revised midwifery rules.

## Sexually Violent Persons (SVPs)

ADHS is responsible for the care and treatment of sexually violent persons (SVP) who are committed to a licensed facility under the supervision of the superintendent of the Arizona State Hospital. SVPs are housed and treated at the Arizona Community Protection and Treatment Center (ACPTC) on the grounds of the Arizona State Hospital. Health Unit attorneys provide the legal advice to this program and handle all related Superior Court and Appellate litigation.

## Medical Marijuana Program

ADHS is responsible for the administration and supervision of the Arizona Medical Marijuana Act (AMMA). Health Unit attorneys provide legal advice to this program and handle administrative hearings, Superior Court and Appellate litigation for ADHS.

*Daniels v. Arizona Department of Health Services, 1 CA-CV 17-0466, 2018 WL 5269789 (App. Oct. 23, 2018):* This case was brought in the Superior Court and sought certification as a class action and to obtain mandamus and declaratory judgment relief. Plaintiffs represented medical marijuana qualifying patients and a designated caregiver who asserted that (1) ADHS exceeded its statutory authority when it set the registration fees for qualifying patients at \$150 or \$75 for SNAP participants and \$200 for designated caregivers; and (2) that these registration fees are unconstitutionally excessive because the Medical Marijuana Fund has a surplus. The Superior Court dismissed the case because it lacked jurisdiction and failed to state a claim upon which relief could be granted. Plaintiffs appealed and the Court of Appeals affirmed the dismissal, holding that Plaintiffs presented a nonjusticiable political question.

*Saguaro Healing LLC v. State, 1 CA-CV 18-0242, 2019 WL 1410627 (App. Mar. 28, 2019):* Plaintiff filed a lawsuit alleging that the Department violated the Arizona Medical Marijuana Act ("AMMA") and its rules by failing to allocate it a dispensary registration certificate to Plaintiff. Plaintiff argued that the Department had a duty to allocate Plaintiff a certificate because Plaintiff submitted the only application in the 2016 certificate allocation for a county that had no operating dispensary. The Department successfully argued to the trial court that it had followed its rules to allocate certificates and did not allocate a certificate to Plaintiff because at the time applications were submitted, another dispensary existed in the county at issue. The Court of Appeals agreed and affirmed the trial court. Plaintiff filed a Petition for Review; we are waiting to see if the Supreme Court grants review.

*Premium Leaf, Inc. v. Arizona Department of Health Services, 1 CA-CV 18-033, Arizona Court of Appeals:* Plaintiff filed its lawsuit alleging that the Department violated the Arizona Medical Marijuana Act ("AMMA") and its rules by allocating a dispensary registration certificate to a certificate applicant that, according to Plaintiff, submitted an application that violated the Department's rules. Specifically, Plaintiff alleged that the successful applicant's proposed dispensary location failed to satisfy local zoning requirements and therefore the applicant did not submit a complete, valid, application. Per Plaintiff, by allocating the certificate to the successful applicant, the Department violated the AMMA and the Department's own rules. The Superior Court agreed with the

Department and dismissed this case. Plaintiff filed an appeal and oral argument is currently set for September 24, 2019.

## State Hospital

ADHS operates the Arizona State Hospital (ASH), which is responsible for the care and treatment of the most seriously mentally ill patients in the State and the care and treatment of forensic patients who have committed crimes but have been judged to be either guilty except insane or not guilty by reason of insanity. Health Unit attorneys provide legal advice to ASH and handle all related Superior Court and Appellate litigation.

## Federal Court Case Highlights

The Health Unit is defending two cases in Federal District Court.

### Mental Health Case

*Arizona Center for Disability Law v. Christ, et al., Case No. 2:18-cv-02854-MHB*: The Arizona Center for Disability Law (ACDL) filed a complaint against ADHS's Director and the Superintendent of the Arizona State Hospital asserting that the ACDL was entitled to greater access to the Hospital and its patients, and to a particular patient's records. This matter is ongoing.

### Licensing Case

*Planned Parenthood of Arizona, Inc. v. Brnovich, et al., Case No. 4:19-cv-00207-JGZ*: Planned Parenthood of Arizona sued Attorney General Brnovich, ADHS's Director and the board members and executive directors of the Arizona Medical Board and the Arizona State Board of Nursing. Planned Parenthood is challenging statutes that were enacted in 2009 and 2011, asserting that they now impose an undue burden on a women's right to abortion. This matter is ongoing.

## Significant Matters

### *Emergency Medical Services and Trauma Systems Program*

Any person or entity that wants to operate an ambulance service must be granted a Certificate of Necessity (CON). The Health Unit represented ADHS with respect to numerous Ambulance CON applications during FY19; several resulted in administrative hearings, including one that resulted in 26 hearing days spread out over multiple weeks and months that has gone through the judicial review process and will likely be appealed.

The Health Unit also provided advice, drafted, and/or reviewed consent/settlement agreements involving administrative enforcement actions taken against the license of an Emergency Medical Certified Technician whose actions were determined to be a threat to the health and safety of Arizona residents. The Health Unit attorneys also provide general legal advice on a weekly basis to this program.



## *Women, Infants, and Children Program*

The Health Unit attorneys represent the Arizona Women, Infants, and Children Supplemental Nutrition Program administered by the Bureau of Nutrition and Physical Activity, Arizona Department of Health Services. Due to the implementation of the eWIC system last year, ADHS now has instantaneous information of all participant purchases made at the stores of authorized vendors. Access to real-time information increases ADHS' ability to conduct focused investigations of persons who misuse WIC benefits and authorized vendors who fraudulently accept WIC funds for unauthorized purchases. In addition, eWIC records give ADHS the specific dollar amount of WIC funds misused by participants and vendors. By means of this system, ADHS gathered substantial evidence supporting the termination of multiple vendors from the WIC Program. As part of those termination actions, ADHS has sought the reimbursement for over \$100,000 of WIC funds.

The Health Unit also provided legal advice to the AZ WIC Program on such matters as the administrative hearing process as articulated in the federal regulations governing the WIC Program; the manner of seeking reimbursement for fraudulently acquired WIC funds; local WIC agency relationships to the state program; contract matters; and requests from federal law enforcement agencies investigating criminal activity on the part of WIC vendors.

## *Health Care Institutions Licensing*

Health attorneys represent ADHS in multiple enforcement meetings, informal settlement conferences, and provided weekly advice in matters involving hospitals, long term care facilities, outpatient treatment centers, urgent care facilities, and behavioral health facilities. In addition, Health attorneys represent ADHS employees during fact witness depositions and court appearances. In addition to providing legal advice, the Health Unit represented ADHS in several prominent health care licensing matters this past year.

In *State v. Ruiz*, May 2019, the Superior Court granted the Health Unit's motion for summary judgment seeking a permanent injunction against the operator of a number of unlicensed assisted living homes.

In *Heritage at Carefree, LLC v. Arizona Department of Health Services*, Case No. LC2018-000158-001, the Superior Court upheld the agency's decision to assess civil money penalties against an assisted living facility that allowed its employees and its employees' family members from acting as personal representatives for residents, a clear conflict of interest.

*Southwest Key*: Health Unit attorneys assisted ADHS in its handling of the *Southwest Key* matter, which involved the holding of immigrant children for the federal government. Health Unit attorneys drafted a settlement agreement that resulted in the closing of several Southwest Key facilities.

*Hacienda*: Health Unit attorneys assisted ADHS in dealing with Hacienda, an intermediate care facility for individuals with intellectual disabilities ("ICF-IID") that was previously unlicensed by the State. After Hacienda had a terrible, widely publicized event occur at its ICF-IID, ADHS negotiated a provider agreement that allowed Hacienda to continue to operate, with State oversight. That oversight continued through new licensing legislation that now requires ICF-IIDs to be licensed. ADHS and its sister agencies are continuing their oversight of Hacienda to ensure that Hacienda provides safe care to its patients.

## *State Lab Licensing*

ADHS, through its Office of Lab Licensure, licenses environmental labs that do compliance test of air, drinking water, and wastewater. Health Unit attorneys assisted ADHS in an enforcement action against the City of Cottonwood, which operated a lab licensed to do compliance testing for drinking water and wastewater. As part of an annual inspection, ADHS concluded that the City was not in compliance with Arizona law governing environmental labs. ADHS initiated an investigation, conducted personal interviews of lab employees, and reviewed lab data for a couple of years. ADHS determined that several City employees falsified lab data that was reported to ADHS. During this process the Health Unit attorneys provided advice, attended enforcement meetings, and eventually worked on a settlement of the license enforcement action. As part of the settlement, the City agreed to not renew its license, agreed to contract out its lab work for a period of time, and agreed to civil money penalties. ADHS also assisted the AGO Criminal Division in the prosecution of two City employees who were charged with and convicted for their unlawful acts related to the City's former lab.

## *Midwives Licensing*

In addition to providing general legal advice, the Health Unit has been actively representing ADHS in enforcement actions against licensed midwives. In the past fiscal year, ADHS successfully upheld enforcement actions in the Superior Court and in the Court of Appeals.

## *Child Care Licensing*

Health Unit attorneys represent the Bureau of Child Care Licensing. This Bureau licenses child care facilities and homes. Health Unit attorneys represented CCL inspectors as fact witnesses in Superior Court lawsuits alleging negligence against two child facilities. Health Unit attorneys also provided advice on the implementation of immediate sanctions against a child care facility for placing enrolled children in immediate danger for harm to life and safety.

## *Sexually Violent Persons*

ADHS is responsible for the care and treatment of sexually violent persons (SVP) who are committed to a licensed facility under the supervision of the superintendent of the Arizona State Hospital. SVPs are housed and treated at the Arizona Community Protection and Treatment Center (ACPTC) on the grounds of the Arizona State Hospital. Health Unit attorneys provide the legal advice to this program and handle all related Superior Court and Appellate litigation. The Health Unit filed more than 90 annual reports and approximately 400 quarterly and monthly reports for the ACPTC. In the past year, Health Unit attorneys represented the State or the ACPTC in six SVP petitions for discharge and other related matters at Superior Court.

## *Medical Marijuana Program*

ADHS is responsible for the administration and supervision of the Arizona Medical Marijuana Act (AMMA). Health Unit attorneys provide legal advice to this program and handle related Administrative, Superior Court, and Appellate litigation for ADHS. ADHS processes approximately 900-1100 medical marijuana card applications per day, and regulates 117 operating medical marijuana dispensaries. The Health Unit provides advice and helps

ADHS efficiently manage this complex, highly regulated, and growing industry. Attorneys in the Health Unit handled approximately 225 medical marijuana cardholder and dispensary matters in the past year. ADHS settled the majority of the cases, with approximately 40 cases going to hearing.

The Health Unit continues to defend ADHS in Superior Court lawsuits alleging that ADHS improperly allocated dispensary registration certificates during its October 2016 allocation process. In the last year, the Health Unit has defended six medical marijuana cases in Superior Court, resulting in three dismissals. The three active cases remain. The lawsuits have been brought either by a dispensary or by entities attempting to open a dispensary. All of the lawsuits challenge the Department's actions pursuant to rules related to the AMMA.

ADHS has recently stepped up its enforcement actions against medical marijuana dispensaries with the help of the Health Unit attorneys:

*YHS:* Health Unit attorneys successfully defended ADHS and its Director in a civil action filed in Superior Court challenging the results of a dispensary enforcement action. The case was dismissed with prejudice after the dispensary rescinded its notice of claim and agreed to ADHS increased monitoring activities.

*CSHC:* During an unannounced inspection of the dispensary's cultivation facility, ADHS discovered 35 unauthorized workers at the facility. Health Unit attorneys have since filed a revocation action against the dispensary.

## *Office of Vital Records*

In addition to providing legal advice to the Office on a weekly basis, the Health Unit represented the Office in 12 separate reviews of Superior Court Orders that purported to change vital record information held by ADHS, and represented ADHS in eight Superior Court matters involving delayed birth hearings and gender-based or same-sex issues. At the request of ADHS, Health Unit attorneys also provided training to County Registrars who must interface on a regular basis with the ADHS vital records database.

## *Arizona State Hospital (ASH)*

Health Unit attorneys provide daily advice to ASH for both civil and forensic patients who have been committed to ASH. Health Unit attorneys and staff prepare numerous weekly filings with the Superior Court related to committed persons at the State Hospital, and attend hearings before the Superior Court and at the Psychiatric Security Review Board. To that end, Health Unit attorneys attended 115 civil mental health commitment hearings before the Superior Court. They also prepared 93 annual review filings for persons who are gravely disabled, and attended 6 Superior Court hearings on those matters. In the area of guardians for patients committed to ASH, Health Unit attorneys participated in 6 guardianship hearings in Probate Court, and successfully removed a guardian who was not acting in the best interests of the patient. Finally, Health Unit attorneys participated in 93 hearings for forensic patients before the Psychiatric Security Review Board.

## *Arizona Radiation Regulatory Commission (ARRA)*

ARRA became the Bureau of Radiation Control under ADHS. The Bureau of Radiation Control handles

inspection and licensing of radioactive materials, registration and inspection of x-ray machines, assessing risk of environmental exposure to radiation, and surveillance of radiation levels at Palo Verde. The licensing of radiology technicians was transferred internally to the Bureau of Special Licensing. Health Unit Attorneys assisted ADHS with this transition of both functions to ADHS and represents both programs at ADHS.

## *Procurement Office*

Health Unit attorneys review various contracts for ADHS and provide regular advice regarding the Procurement Code, RFIs, RFPs, IGAs, ISAs, MOUs, and Protests. This past year, Health Unit attorneys reviewed and/or approved 562 contracts from ADHS.

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

Health Unit attorneys represented the Arizona Commission for the Deaf and the Hard of Hearing in four board meetings. During the meetings, Commissioners requested legal advice in executive session resulting in enforcement actions involving two licensees. The Health Unit worked closely with Commission staff in presenting evidence to the Commission and in clarifying the administrative hearing process. In addition, Commission staff and the Health Unit collaborated on a position paper on the role of Support Service Providers when providing communication assistance to deaf-blind consumers.

## *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 civil money penalties assessed by the ADHS for FY 2019 was an estimated \$625,000.

## *Miscellaneous*

Health Unit attorneys participate in the AGO Taskforce against Senior Abuse (TASA), AGO Procurement/Contracts Committee, the AGO Indian Law Committee, and national Public Health Attorneys' conference calls with the CDC and the Association of State and Territorial Health Officials. Also, a Health Unit attorney serves on the Arizona Drug Overdose Fatality Review Team.

In addition, Health Unit attorneys attended the Public Health Law Conference held at the Sheraton Wild Horse Pass and presented on the topic of Emergency Declarations for Chronic Public Health Issues: Examining the Use of Emergency Authorities to Respond to Lead in Soil, Hepatitis A, and Opioid Misuse. Lastly, attorneys in the Health Unit and Education Unit attended the AZ Trial College offered by the State Bar.

## Education Unit

### Major Case Highlights

*Glendale Elementary School District v. State of Arizona (School Financing)*: On May 2, 2017, four public school districts, one taxpayer, and three education-related professional associations, represented by the Arizona Center for Law in the Public Interest, filed a complaint against the State, the School Facilities Board (SFB), and its members alleging that the State has violated the Arizona Constitution by (a) failing to provide capital funding necessary to ensure that all school districts can comply with the State’s minimum adequacy standards for school buildings, facilities, and equipment, and (b) maintaining outdated and inadequate minimum school facility adequacy guidelines for buildings, facilities, and equipment. Plaintiffs further contend that the alleged deficiencies in the capital funding “system” have allegedly shifted the State’s responsibility for funding public schools to school districts and their taxpayers. The Speaker of the Arizona House of Representatives and President of the Arizona Senate have specially intervened in the matter. Outside counsel have been retained to handle this matter, but Education Unit attorneys are assisting in the matter, in particular with discovery from SFB and ADE regarding the State’s funding of public schools.

*Legacy Education Group vs. Arizona State Board for Charter Schools*: Two Arizona charter schools filed a complaint against the Arizona State Board for Charter Schools, seeking declaratory and injunctive relief relating to the Board’s use of its academic performance and financial performance frameworks (“frameworks”) in its consideration of renewal, revocation, amendment and other decisions pertaining to the charter contracts of its sponsored schools. The charter schools sought a determination that the frameworks are rules under the APA, that the Charter Board’s failure to adopt them under the APA renders the frameworks void and unenforceable. Following the filing of dispositive motions, the Superior Court granted the Board’s Motion to Dismiss on the basis of the Court’s finding that the APA did not apply to the statutorily required frameworks. The schools appealed.

Following the filing of the appeal, the Board adopted rules regarding the frameworks under the APA. Then, the 2018 Legislature amended A.R.S. § 41-1005, thereby exempting the Board from several provisions of the APA; however, the Legislature did not make the law retroactive. The Court of Appeals then determined that until the 2018 legislation exempting the Board took effect, the Board has been subject to the APA’s rulemaking requirements. The Superior Court’s judgment was vacated and the matter remanded. The parties recently settled the case, with the Board agreeing to pay the Plaintiffs’ attorneys fees.

*Equality Arizona v. Hoffman*: Equality Arizona and two Arizona students sued the Superintendent of Public Instruction and the members of the State Board of Education under 42 U.S.C. § 1983, alleging that A.R.S. § 15-716(C) and a State Board rule denied LGBTQ students equal protection of the laws based on sexual orientation. The law and rule at issue prohibited schools from adopting curriculum that “promotes a homosexual life-style,” “portrays homosexuality as a positive alternative life-style,” or “suggests that some methods of sex are safe methods of homosexual sex,” and required schools that offer sex education curriculum to provide materials and instruction that “promote honor and respect for monogamous heterosexual marriage.” Shortly after the lawsuit was filed, the Arizona Legislature repealed A.R.S. § 15-716(C), and Education Unit attorneys assisted the State Board in repealing its rule. In view of the repeal of the challenged laws, the plaintiffs agreed to dismiss the lawsuit and did not seek attorneys’ fees.



*ASU Prep Charter Schools v. Arizona Department of Education*: Under Arizona law, small district and charter schools (under 600 students) receive increased payments to assist with maintaining schools that cannot take advantage of economies of scale that large schools enjoy. In 2015, the Legislature amended the small school weight law to prohibit its use by schools that share administrative functions among multiple schools that together exceed the 600 student limit. In addition, under that 2015 law, charter schools not sponsored by the Arizona State Board for Charter Schools (the “Charter Board”) were also not eligible for small school weight funding. The Arizona Department of Education had been providing the small school weight funding to the twelve schools within the ASU Prep Charter Schools system, which together serve more than 600 students and are the only charter schools in the state not sponsored by the Charter Board. After requesting advice from the Education Unit, the Department of Education informed ASU Prep that it would no longer be receiving small school weight funding. ASU Prep appealed that decision. Before the appeal was heard, ASU Prep obtained a legislative change that permits it to continue to receive the small school weight funding it had been receiving, for fiscal year 2020, and a decreasing portion of that funding in fiscal years 2021 and 2022. Beginning in fiscal year 2023, ASU Prep will not receive small school weight funding. Education Unit attorneys assisted with obtaining a resolution of the appeal following the legislative change.

## Significant Matters

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

Education Unit attorneys provided day-to-day client advice on special education, school improvement, school finance, federal grant programs, health and nutrition programs, academic standards, student assessment, data and student privacy, public records, and procurement matters. Education attorneys also continue to advise ADE in implementing a Resolution Agreement between the United States Department of Justice and the United States Department of Education Office of Civil Rights related to ADE’s development and administration of its assessment (test) for English Language Learners (ELL).

Additionally, Education Unit attorneys assisted ADE in addressing public records requests including issues related to FERPA and other confidential teacher and student records. We also provide assistance with enforcement actions against those who make improper use of Empowerment Scholarship funds. This year Education Unit attorneys negotiated several settlements with parents who misused ESA monies. In addition, Education Unit attorneys conducted five administrative hearings regarding appeals of ESA terminations; ADE was successful in these five hearings. We also provided assistance to the Empowerment Scholarship Account Program in managing collections and criminal referrals to the Attorney General’s Office.

### *Arizona Department of Education Audits*

In addition to representing ADE’s audit unit generally in connection with audits against the districts and charter schools, the Education Unit attorneys assist ADE in the negotiation of settlement agreements and represent ADE in any administrative audit appeal hearings.

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

In addition to providing day-to-day legal advice to Board staff, Education attorneys reviewed and revised Board meeting agendas for compliance with the Open Meeting Law and attended all Board meetings to advise the Board.

## *Professional Practices Advisory Committee (PPAC)*

During the 2019 fiscal year, Education Unit attorneys represented the State in connection with 240 cases in which teachers or school administrators were alleged to have committed professional misconduct. Of that total, 36 cases were closed after initial review revealed an insufficient basis for disciplinary action. Education Unit attorneys conducted 42 administrative hearings before the PPAC, drafted 35 settlement agreements, obtained 41 surrenders of educator certificates, and defended three motions for rehearing, each of which was denied. Of the 42 administrative hearings, fifteen resulted in revocation of the educator's certificates, twelve resulted in a suspension of the educator's certificate, two resulted in a letter of censure to the educator, five resulted in the educator's application for a certificate being granted, and eight resulted in the educator's application for a certificate being denied.

Beginning in April 2019, two Education Unit attorneys have been assigned teacher discipline cases due to the increase in number of allegations of teacher misconduct. Education Unit attorneys also provide regular legal advice to State Board Staff and the ADE Investigative Unit staff and regularly attend State Board of Education meetings regarding discipline matters for certificate holders.

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

Education Unit attorneys provided day-to-day advice to ASDB staff on various subjects, including contracts, special education issues, responses to subpoenas, and public records requests. Education Unit attorneys also advised ASDB in connection with issues involving changes to ASDB's model of delivery of services at both the three Campus- Based Schools and through the Regional Cooperatives.

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

In addition to providing day-to-day legal advice to Board staff, Education attorneys reviewed and revised Board meeting agendas for compliance with the Open Meeting Law and attended all Board meetings to advise the Board, and assisted the Board in responding to a significant number of public records requests. The Education Unit attorneys also assisted the Board in the development of its procedures for rule and policy adoption following its legislative exemption from several provisions of the APA's rulemaking requirements. During this period, the Education Unit attorneys also assisted the Board in reaching a settlement agreement with Pointe Education Services that allowed the school to avoid closing because of its failure to administer the AIMS Science test in FY2018. That agreement included the withholding of 10% of Pointe's monthly State Aid monies until the Board confirms that Pointe administered all State Standard Assessments for the 2018-19 school year, and requires Pointe to provide testing and assessment reports for two years to the Board.

## *School Facilities Board (SFB)*

In addition to providing day-to-day client advice on agency programs, Education Unit attorneys attended all

Board meetings and advised the SFB on open meeting laws and public records request. Education Unit attorneys assisted Board and staff to respond to the 2019 Special Audit of the Building Renewal Grant Fund. Education Unit attorneys assisted SFB in accomplishing its objectives of improved services to school districts by advising on legislation, policies and procedures, procurement and service issues. Education Unit attorneys worked with the SFB in facilitating discovery to and from the SFB in the Glendale Elementary School District lawsuit.

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

Education Unit attorneys review Board meeting agendas and provide advice to the ACPE for compliance with open meeting law issues and the public records law. Education Unit attorneys reviewed and provided advice on the Fact Kits required by the 529 Savings Plans for Fidelity Funds and Waddell & Reed for compliance with Federal and State requirements. In addition, Education Unit attorneys responded to the request from Price Waterhouse Cooper, LLC for the annual audit of the Fidelity's Annual College Savings Plan. Education Unit attorneys assisted ACPE in providing advice and/or drafting agreements to further ACPE's objectives to increase FAFSA completions rates.

## *Attorney General Opinions*

Under A.R.S. § 15-253(B), school district attorneys submit their legal opinions on school matters to the Attorney General, who may concur, revise, or decline to review the opinion within sixty days. During Fiscal Year 2019, the Education Unit reviewed seven school district legal opinions submitted under A.R.S. § 15-253(B), revising three of them, which were adopted as formal Attorney General Opinions. In addition, attorneys in the Education Unit assisted with the preparation of other education-related Attorney General Opinions during the year. For FY 19, Education attorneys also participated in drafting two formal Attorney General Opinions requested pursuant to A.R.S. § 41-193.

## *Dollars Generated or Saved*

Education Unit attorneys assist the ADE Audit Unit in its recovery/repayment of overpaid State funding from public schools in an amount in excess of \$1.2M for FY 2019.

## *Miscellaneous*

Education unit attorneys serve on the Office's School Fraud Task Force, the Procurement/Contract Committee, and provide assistance on Open Meeting Law enforcement matters as requested.

## Employment Law Section

The Employment Law Section (ELS) supports the effective management of Arizona Government's most important resource - its employees. ELS provides advice and counsel, at every stage of the employment relationship, to more than one hundred state agencies, boards, commissions, and courts. ELS also provides proactive training for supervisors across state government in order to promote sound management practices and positive employee relations, thereby minimizing liability to the State. When necessary, ELS also counsels and defends client agencies against claims of harassment, disability, gender, age, race, national origin and religious discrimination, wrongful discharge and various employment-related torts. ELS attorneys regularly represent state agencies in state and federal courts and before administrative agencies such as the U.S. Equal Employment Opportunity Commission (EEOC), the State Personnel Board, and the Law Enforcement Merit System Council. ELS also represents the State in workers compensation matters that would otherwise be referred to outside counsel.

### **Significant Responsibilities**

#### *ELS Advice and Hearing Practice*

ELS provided more than 2,000 hours of legal advice to State human resources professionals and agency management on a wide range of day-to-day employment issues such as employee performance, employee discipline, wage and hour issues under the Fair Labor Standards Act, accommodating individuals with disabilities, and leave issues under the Family and Medical Leave Act.

#### *Extensive Training for Supervisors and Agencies Across Arizona*

Another key component to preventing EEOC charges and employment litigation against the State of Arizona is training state employees, particularly supervisors, on compliance with state and federal employment laws including anti-discrimination statutes, wage and hour laws, and medical leave and disability laws. On at least a quarterly basis, ELS attorneys provide four-hour, in-person training sessions in partnership with the Arizona Department of Administration to ensure that every new supervisory employee in the State Personnel System receives employment law compliance training. ELS also provides training sessions to specific state agencies upon request, on topics ranging from ADA and FMLA compliance, to keeping the workplace free of discrimination and harassment, and the wage and hour requirements of the Fair Labor Standards Act. During the most recent fiscal year, ELS attorneys provided twenty-four such presentations across the State.

#### *Employment Litigation Practice*

ELS attorneys provide legal advice to assist State agencies in avoiding liability by attempting to resolve problems early, creatively, and without the need for litigation. When the need for litigation does arise, ELS attorneys provide subject matter expertise in all stages of litigation.

ELS represents the State in employment lawsuits covered by the State's self-insurance program, as well as in some non-risk management cases. In FY 2019, ELS opened files for 12 new Risk Management lawsuits. ELS

also monitored and assisted agencies in responding to 63 charges of discrimination filed with the federal Equal Employment Opportunity Commission (EEOC). ELS closed 46 EEOC charges. ELS attorneys and legal assistants billed nearly 11,000 hours on Risk Management litigation matters (lawsuits, claims and EEOC charges).

## Major Case Highlights

*Hummel v. Maricopa County Superior Court Adult Probation Department:* In April 2019, the Maricopa County Adult Probation Department (“APD”) received summary judgment in its favor on former probation officer Nan Hummel’s discrimination claim under Title I of the Americans with Disabilities Act (“ADA”). The district court disagreed with the EEOC, which had found that APD had failed to provide Hummel with a reasonable accommodation for her disability when it terminated her employment because she was medically unable to return to work after seven months of leave. The district court found that because Hummel admittedly was unable to perform the essential functions of her job after repeated extensions of medical leave beyond the FMLA entitlement, she was not a qualified person with a disability, and further attempts to accommodate her were not required. The case is being appealed to the Ninth Circuit. AAG Ann Hobart and paralegal Hank Vaci are handling the matter for APD.

*Sanchez-Valdez v. State of Arizona (Department of Corrections):* In June 2017, Plaintiff filed suit against the State claiming disability discrimination under the Rehabilitation Act because Plaintiff, who as a Corrections Officer was in a safety-sensitive position, was instructed to provide information regarding the frequency and dosage of medications she disclosed she was taking, and was disciplined when she unreasonably delayed in providing the requested information to Occupational Health. Sanchez-Valdez also claimed that the Department retaliated against her when she subsequently was dismissed for dishonesty after violating ADC’s policies regarding the proper exchange of weapons at the time of shift change. In April 2019, the U.S. District Court for the District of Arizona granted summary judgment in the State’s favor on all of plaintiff’s claims. In August 2019, the Court awarded costs against Plaintiff and in favor of the State in the amount of \$4,705.00. AAG Rachel Remes represented the State in the case.

## *ELS Workers Compensation Practice*

The ELS workers compensation group opened 71 new matters and closed 88 matters. ELS attorneys and legal assistants billed more than 2,790 hours to workers compensation matters. These matters require statewide administrative litigation, and the group also handles its own appeals to the Arizona Court of Appeals. Additionally, ELS workers compensation attorneys provide significant legal advice to adjuster clients and to State agency personnel when they approach ELS with workers compensation issues.

## Liability Management Section

The Liability Management Section (LMS) defends the State of Arizona and its employees in cases in which money damages are requested in tort and civil rights cases. LMS also provides advice to the Risk Management Section of ADOA on matters related to liability claims.



## Major Accomplishments

### *Appeals*

*Bonelli v. Mulla*: Plaintiff pled guilty but insane after an aggravated assault upon two sheriff's deputies. After his attorney unsuccessfully argued he should be released in 2010, Plaintiff filed suit against his psychiatrist at the State Hospital. The Ninth Circuit affirmed the grant of summary judgment, finding the suit was barred under the statute of limitations.

*Crockett v. Venalongo*: Prison inmate Charles Crockett sued Corrections Officer Venalongo, asserting various constitutional claims arising from an investigation into suspected prison contraband that involved a strip search. Defendant won summary judgment in the district court, and the Ninth Circuit affirmed.

*Livingston v. Esslinger, et al*: Plaintiff sued Department of Child Safety social workers claiming that they had prematurely terminated a dependency based on an incorrect determination that he was no longer a minor. The district court granted summary judgment to most of the social workers based on qualified immunity, but denied it as to three of them holding that Plaintiff had a clearly established right to "restoration services" and the social workers therefore had a duty to determine Plaintiff's true age." On interlocutory appeal, the Ninth Circuit held social workers had immunity because there was no clearly established right to restorative services.

*Ragsdale v State*: Plaintiffs' son died when his vehicle struck four horses on a rural highway in the dead of night. Plaintiffs claimed the horses accessed the highway through an open gate in the right-of-way fence, and that the Department of Transportation was negligent for failing to keep the highway secure. Based on ATV track evidence, the State argued that the gate was left open by unknown ATV riders and named the unknown ATV riders as a nonparty at fault. The trial court granted Plaintiffs' motion and struck the notice of nonparty at fault finding that it was unknown who actually left the gate open so defendant could not argue the nonparty was at fault. The State filed a Special Action with the Court of Appeals claiming the notice of nonparty was proper. The Court of Appeals reversed the trial court and reinstated the nonparty at fault designation. The Court of Appeals stated that the procedural rule 26(b)(5) "may not be read to undermine a defendant's statutory right to be assessed no more than its proportionate share of fault."

*State v. Calvin*: Calvin asserted that the Department of Corrections was wrongly holding him in prison because it was incorrectly calculating his sentences. He argued that because the sentencing court had made one of his sentences concurrent to other sentences, his completion of the latter should have been credited to the former. The trial court ruled that ADC's calculation was correct. The Arizona Court of Appeals affirmed, holding that time spend on one concurrent sentence is credited to another concurrent sentence only while those sentences overlap and that was not the case here.

*VanLoan v. Nation of Islam, et al*: Plaintiff filed lawsuit alleging conspiracy between multiple governments, Nation of Islam, and others, including the head of the Arizona Department of Health Services, to kill him with medication that doesn't exist, in retaliation for using a racial slur in December 2013. The Court granted a full dismissal based on subject matter jurisdiction after briefing from several Defendants. The case is now under appeal to the 9th Circuit.

*Walker, v. Ryan*: Inmate Walker sued prison officials, claiming that they had violated his religious rights by denying him a kemetetic diet. Defendant's prison chaplains won summary judgment on both the First Amendment claim and the claim under the Religious Land Use and Institutionalized Persons Act, and the Ninth Circuit affirmed.

## Trials

*Larsgard v. Straub*: Prison inmate Larsgard claimed that his 6th amendment right-to-counsel was violated when a corrections officer, pursuant to regulations promulgated by the Director, interfered with communication with his attorney. After a two-day federal jury trial, the jury returned a defense verdict.

*Uiagalelei v State*: Surviving wife claimed the Department of Transportation's highway maintenance was negligent after her husband died when his fuel tanker truck rolled and exploded in a single vehicle accident. The State argued its maintenance was proper and fault should be placed on the poorly trained driver and his employer. Before trial, Plaintiff demanded \$3.9 million. The jury found the State 5% at fault and returned a verdict against the State for only \$60,000.

## Motions for Summary Judgment

*Montes v. Lora Morales Fernandez, et al.*: Plaintiff filed suit against multiple Department of Child Safety employees for alleged civil rights violations for removal of his children without a court order. The district court granted summary judgment finding exigent circumstances existed to justify the removal.

*Pereyda-Rios v. DPS*: A registered sex offender had his finger chopped off during a drug deal gone wrong. He sued DPS and the manager of DPS's sex-offender website, claiming that his assailants viewed erroneous information about him on the website, causing them to chop off his finger. The district court granted summary judgment for the defense, finding that his procedural and substantive due process rights had not been violated.

## 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 boards, 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 legislation, and ensures compliance with open meeting laws, public records requests, and statutory changes.

## Major Accomplishments

In the past fiscal year, LES opened 542 case files, and closed 782. In addition, it is responsible for providing independent legal advice, both procedural and substantive, to its client agencies in connection with prosecutions and adversary proceedings. That role was previously assigned to what was then the SGO, but was limited to

giving only procedural advice. It is also currently involved in 5 cases pending before the Court of Appeals.

### Appellate Highlights

Attorneys from LES were successful in several cases resulting in decisions from the Court of Appeals.

*Fisher v. Arizona State Board of Nursing*, 1 CA-CV 18-0167 (App. 2019) involved a claim by a nurse that his license was improperly revoked by the Board. Fisher argued that he was denied due process and that the decision was not supported by substantial evidence. The Court of Appeals rejected these assertions, and affirmed the Board.

*Ruben v. Arizona Medical Board*, 1 CA-CV 18-0079 (App. 2019) involved a challenge to the Board's order imposing a censure, two years of probation and restrictions on his prescribing privileges with respect to class II drugs. Ruben argued that the Board's written justification for rejecting certain ALJ legal conclusions was insufficient under ARS § 41-1092.03(B). The court rejected this argument and found that the Board met the statutory requirements when it rejected certain ALJ legal conclusions.

*Dew v. Arizona Registrar of Contractors*, 1 CA-CV 17-0397 (App. 2018) involved an appeal seeking to overturn a civil penalty of \$1,227,500. Dew previously had a contractor's license that was revoked. He then had his 90 year old father purchase another license which Dew operated under a power of attorney from his father. When its license was revoked, Dew then entered into a "management contract" with still another licensee. The Registrar determined that Dew's activities as a "manager" amounted to unlicensed contracting, and assessed a \$2,500 per day penalty for each day he "managed" the last company. The court rejected his due process arguments, and found that the penalty fell within the statutory range, so there was no abuse of discretion.

*Knox v. Ravencrest Builders, LLC*, 1 CA-CV 18-0438 (App. 2019) was an appeal brought by the Registrar of Contractors after the Superior Court ordered that a \$30,000 payment, (the statutory maximum) be made to Knox from the Registrar's Recovery Fund. The Court of Appeals reversed and remanded, finding that Knox did not meet the statutory eligibility requirements for a payout from the Fund.

*Welsh-Alexis, et al. v. Arizona Board of Funeral Directors and Embalmers*, 1 CA-CV 17-0768 (App. 2018) involved a challenge to the discipline imposed by the Board against the appellants' funeral industry licenses. The Appellants argued that stacking bodies contained in cardboard containers was not specifically prohibited by statute or rule and therefore did not constitute misconduct. The Court held that doing so was contrary to prevailing industry standards, and upheld the authority of the Board to impose discipline.

<b><i>Civil Assessments and Penalties</i></b> <b><i>(in dollars)</i></b>	
Accounting Board	\$ 44,750.00
Dental Board	\$ 10,400.00
Occupational Therapy Board	\$ 750.00
Athletic Trainers	\$ 3,000.00
Barber Board	\$ 1,780.00
Board of Cosmetology	\$ 115,422.00
Chiropractic Board	\$ 5,659.00
Board of Technical Registration	\$ 55,961.40
Liquor Board	\$ 378,550.00
Nursing Board	\$ 1,825.00
Nursing Care Administrators	\$ 150.00
Pharmacy Board	\$ 113,300.00
Physical Therapy Board	\$ 3,650.00
Private Postsecondary Education	\$ 6,000.00
Registrar of Contractors	\$ 2,556,500.00 <sup>1.</sup>
Respiratory Care Examiners	\$ 8,997.00
Veterinary Board	\$ 1,350.00
<b>TOTAL</b>	<b>\$ 3,308,044.40</b>

1. This figure includes a \$1,277,500.00 penalty from a prior year which was affirmed this year by the Court of Appeals. It does not include in excess of \$100,000 in Recovery Fund Claims successfully defended, nor does it include \$1,462,677.30 in repayments to the Recovery Fund.

### Natural Resources Section

The Natural Resources Section (NRS) represents the Arizona State Land Department (ASLD), the State Parks Board, the Department of Forestry and Fire Management, the State Mine Inspector, the Board of Geographic and Historic Names, and the Prescott Historical Society. Representation generally involves litigation and advice relating to agency authority, compliance with state and federal law, property rights, land use, and contractual issues.

#### Significant Responsibilities

ASLD manages over nine million acres of state trust land, so NRS provides services relating to the sales, leasing, and management of land for commercial, residential, mining, grazing, agricultural, utility, and transportation uses. NRS Attorneys assisted ASLD in successful auctions that will add hundreds of millions of dollars to the state land trust for the benefit of public schools and universities and other public beneficiaries. NRS also assisted ASLD to achieve the annexation of state trust land into and the acquisition of development entitlements from numerous municipalities throughout the state that add value to state trust lands. Additionally, NRS attorneys assist in securing water resources and other infrastructure for the development of state trust land.

NRS Attorneys helped resolve several actions challenging ASLD decisions concerning issuance or renewal of agricultural, grazing, and mining leases. NRS works with ASLD to develop solutions to deal with the long-term conversion of state trust lands from agricultural and grazing uses to commercial and residential uses.

NRS attorneys also assisted in the removal of trespass individuals and property from State Trust land. NRS advises and represents the Arizona State Land Commissioner in her role as public trust advocate relating to the management and protection of sovereign lands belonging to the State along the Colorado River. NRS attorneys regularly attend meetings and provide representation on the Arizona Open Meeting Law for the State Parks Board, including Advisory Committees, and the State Board on Geographic and Historic Names.

## Major Case Highlights

NRS represents the State where its agencies claim water rights in the state water rights adjudications, with water rights claims on state trust lands comprising the majority of those claims.

*In re Aravaipa Canyon Wilderness Area:* Trial held to quantify the United States' federal reserved water rights for the Aravaipa Canyon Wilderness Area. The court ruled that the U.S. bears the burden to prove the minimum amount of water necessary to satisfy the purposes of the reservation, in this case preservation and enjoyment of the wilderness area. In December 2018 the court held, consistent with the State's position, that the U.S. failed to prove that a federal reserved water right to less than the entire natural flow of Aravaipa Creek would frustrate those purposes. Therefore the U.S. did not meet its burden and did not have any right to the flow of the Creek.

*In re Hopi Reservation HSR:* From September 2018 through November 2018, NRS Attorneys completed the first phase of the first trial in Arizona history to determine the federal reserved water rights for an Indian tribe, in other words the quantity of water necessary to fulfill the purpose of Congress in creating the Tribe's reservation. Following the proceedings, the Special Master issued a draft report determining, consistent with the State's position, that the Tribe's assertion of a maximum amount of water used for a particular purpose is not consistent with the "minimalist approach" established by the Arizona Supreme Court.

*In re Subflow Technical Report, San Pedro River Watershed:* In Spring 2018, NRS Attorneys participated in a six-day trial on the issue of whether the cone of depression methodology proposed by the Arizona Department of Water Resources should be adopted for purposes of defining the Court's jurisdiction over wells in the San Pedro watershed which are located outside the lateral boundaries of the subflow zone within the River's floodplain. In November 2018, the Special Master issued a draft report supporting the position advanced by the State and other parties in favor of a numerical model.

## Public Law Section

The Public Law Section (PLS) provides legal advice and representation to a wide range of state agencies, boards, commissions and councils. The Public Law Section's diverse client agencies include those involved in (1) financial and occupational regulation (Departments of Financial Institutions, Insurance and Real Estate); (2) natural resources and energy (Department of Agriculture, Water Quality Appeals Board, Arizona Power Authority); (3) military affairs (Departments of Veterans' Services and Emergency and Military Affairs) and (4) promotions (Arizona Exposition and State Fair Board and Office of Tourism). PLS attorneys advise on all aspects of Arizona public law - such as contract matters, open meetings and public records laws - as well as federal laws and regulations. While most PLS cases begin as administrative enforcement matters litigated at the Office of Administrative Hearings, our attorneys provide legal representation through every stage of the judicial review and appeals process.



## Major Case Highlights

### *Academy Mortgage – Enforcement actions against mortgage bankers and loan originators*

In 2018, Academy Mortgage Corporation (“Academy Mortgage”), a licensed mortgage banker, reported to the Arizona Department of Financial Institutions (“DFI”) that it suspected several of its employees located in its Tucson branch office of illegal or improper business practices. As result, DFI began an intensive investigation of these employees, many of whom were licensees of DFI. The investigation disclosed that these former employees were involved, as a concerted group, in altering and falsifying mortgage documentation and submitting that documentation to Academy Mortgage in order to secure residential mortgages for loan applicants. There is no suggestion that the loan applicants, about 25 of them in total, were aware of this allegedly fraudulent activity.

Representing DFI in its enforcement actions against the former employees, PLS attorneys obtained these results in 2019:

- A.M., a loan processor, entered into a Consent Order and paid a \$2,500.00 civil penalty;
- Y.M., a former loan originator, entered into a Consent Order, paid a \$1,500.00 civil penalty, and was banned for 15 years from participating in the conduct and affairs of any financial institution or enterprise under the jurisdiction of DFI;
- J.P., a former loan originator, entered into a Consent Order, was fined a civil penalty of \$5,000.00 and suspended for 1 year from participating in the conduct and affairs of any financial institution or enterprise under the jurisdiction of DFI;
- M.M., a loan processor, was fined a civil penalty of \$3,000.00 and suspended for 5 years from participating in the conduct and affairs of any financial institution or enterprise under the jurisdiction of DFI, which suspension and penalty came about after an administrative hearing;
- Y.L., a former loan originator, was fined a civil penalty of \$3,000.00 and suspended for 5 years from participating in the conduct and affairs of any financial institution or enterprise under the jurisdiction of DFI, which suspension and penalty came about after an administrative hearing; and
- N.H., a former loan originator, was fined a civil penalty of \$10,000.00 and had his loan originator license revoked, which revocation and penalty came about after an administrative hearing.

### *Sensible Home Warranty- Distribution to Consumers of Funds on Deposit*

Sensible Home Warranty (“Sensible”) was a home warranty company authorized to do business in Arizona by the Department of Insurance (“DOI”). Sensible went out of business in May 2014 without notice and left several unresolved consumer claims. Arizona statutes require home warranty companies to either carry a bond or provide a cash deposit with the State in order to offer home warranties. DOI had a \$100,000 deposit from Sensible and wanted to distribute it to compensate the Sensible contract holders; however, Arizona law does not clearly provide for disbursement of these types of deposits. In 2018, PLS attorneys filed a declaratory action in superior court on behalf of DOI requesting approval to pay restitution to home warranty insurance claimants who were Sensible’s customers and seeking court approval of a process for the review of claims and distribution of funds. The court granted a motion to intervene from a bond company that is a creditor of Sensible seeking any excess proceeds from the distribution. In April 2019, the superior court signed a Consent Order approving DOI’s proposed distribution of funds to consumers. The distribution process is now underway.

## *Holcomb - Real Estate Broker Audit*

The Department of Real Estate (DRE) initiated a revocation action against broker Michelle Holcomb (“Holcomb”) for violations discovered during an audit of her real estate brokerage, Fore Peaks. Holcomb did not provide DRE’s auditors with many of the documents requested, did not maintain certain records, and subsequently ignored DRE for several months after the agency had provided her with additional time to submit the required records. After hearing, the administrative law judge recommended revoking Holcomb and Fore Peaks’ licenses, and the DRE Commissioner did so. Holcomb appealed and the Superior Court upheld the Commissioner’s order in 2018. Holcomb then appealed to the Court of Appeals. In 2019, the Court of Appeals issued a memorandum decision upholding DRE’s decisions to revoke the licenses of Holcomb and Fore Peaks.

## Significant Responsibilities

### *Training for Client Agencies*

In the last year, PLS attorneys provided trainings to client agencies on a wide range of topics, including contract drafting, witness preparation, and conflicts of interest.

### *Department of Emergency and Military Affairs*

PLS attorneys provided legal advice to assist DEMA in its efforts to collaborate with political subdivisions in Arizona, allowing public agencies to work smoothly together in the event of a disaster or emergency.

### *Arizona State Fair*

PLS attorneys played a vital role in supporting the work of the agency responsible for organizing the Arizona State Fair. Our attorneys provided legal advice and representation on diverse and wide ranging matters, including contract drafting and review, real property, First Amendment, gaming, and intellectual property.

### *Department of Agriculture*

PLS attorneys provided advice on open meeting laws, contracts, regulatory enforcement, and other legal issues to the Department of Agriculture, including 19 councils or programs overseen by the Department, including the Department of Agriculture Advisory Council, Arizona Grain Council, Specialty Crop Block Grant Program, Weights and Measures Advisory Council, and Brand Advisory Council.

### *Department of Financial Institutions*

PLS attorneys successfully represented DFI in several licensing enforcement actions throughout the year, including actions involving collection agencies, certified real estate appraisers, and consumer lenders.

## Tax Section

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

## Major Case Highlights

*Saban v. ADOR*, 1 CA-TX 16-0007; TX2010-001089 – Car rental companies in Maricopa County filed a class action lawsuit challenging the constitutionality of a transaction privilege (sales) tax (“TPT”) on income earned by those companies from their rental of vehicles under both the Arizona Constitution and the Dormant Commerce Clause. 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, including Cardinals Stadium, seeking upwards of \$250 million in refunds and interest. The Tax Section and AzSTA prevailed before both the Arizona Court of Appeals and the Arizona Supreme Court. Plaintiffs recently filed a petition for certiorari with the U.S. Supreme Court on the Dormant Commerce Clause issue, and that petition is pending.

*Wilbur-Ellis Company v. ADOR*, 1 CA-TX 17-0003; TX2016-000078 – This case concerned a refund request for \$8,312,145 plus interest for transaction privilege taxes paid on fertilizers and pesticides sold to commercial growers in Arizona over a four-year period. The taxpayer claimed these items were exempt under A.R.S. § 42-5061(A)(33) as “propagative materials,” and as “sales for resale,” arguing that the fertilizer is necessary for plant growth and that it becomes a part of the plant or plant product that is then resold.

On cross-motions for summary judgment, the Arizona Tax Court granted the Department’s Motion for Summary Judgment and denied the taxpayer’s, and the Court of Appeals affirmed that decision. The Arizona Supreme Court recently rejected the taxpayer’s petition for review, saving the State in excess of \$15 million for the four-year period at issue, as well as subsequent years.

*SolarCity, et al. v. ADOR*, No. CV-17-0231-PR, TX2014-000129 – In tax year 2014, the ADOR began valuing rooftop solar equipment owned by rooftop companies and leased to their customers as business personal property for property tax purposes. SolarCity sued the ADOR, alleging that its equipment was not taxable under Arizona law, and that even if it were, the ADOR could not value it. The Arizona Tax Court ruled that the ADOR could not value the equipment, but that the equipment was taxable and that it thus had to be valued by county assessors. On appeal, the Court of Appeals ruled entirely in favor of SolarCity, finding that the equipment was not taxable under Arizona law, and that the exemption did not violate the Exemptions or Uniformity Clauses of the Arizona Constitution.

The Supreme Court affirmed the Court of Appeals’ opinion that ADOR could not value the equipment, but then vacated the remainder of the opinion and remanded the case back to the trial court for the counties to be joined to litigate whether rooftop equipment is taxable under Arizona law. The main issues on remand were whether the Legislature had statutorily exempted the companies’ rooftop equipment from taxation, and if so, whether that exemption violates the State Constitution.

Before the parties could litigate the issues, the rooftop industry, in conjunction with most Arizona counties, agreed upon a bill that the 2018-2019 Legislature passed that prescribed a valuation formula for leased rooftop equipment. Presumably, the industry did so given the inherent weakness of its argument that its equipment could be exempted from taxation when there is no exemption for such equipment in the State Constitution, in particular, article 9, sections 1 and 2.

## Transportation Section

The Transportation Section (TRN) provides legal services to the Arizona Department of Transportation (ADOT) and the Arizona Department of Public Safety (DPS). TRN also advises a wide range of boards, commissions, and committees, including 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 Arizona Companion Animal Spay and Neuter Committee, ADOT's Homeland Security Committee, and the School Bus Advisory Council.

TRN's representation of ADOT encompasses a wide variety of subject areas including litigation and advice related to acquisition of real property needed for highway construction purposes, as well as related construction contract matters. We provide legal advice to the Aeronautics Division of ADOT, which oversees the Grand Canyon Airport, and to Arizona Highways Magazine. We represent the Motor Vehicle Division of ADOT (MVD) concerning motor vehicle registration, driver licensing including commercial driver licensing, motor carrier issues, over-dimensional permits, third party vendors and motor vehicle dealerships. Attorneys representing MVD also handle the appeals from administrative decisions suspending driving privileges.

TRN represents DPS in connection with a broad range of licensing and certification issues, including concealed weapon permits, private investigator and security guard licenses, school bus driver certifications, vehicle contraband forfeiture matters other matters regulated by DPS. Attorneys representing DPS also provide advice on a wide variety of issues including criminal history record information, a statewide sex offender registration database, commercial vehicle enforcement, impounds, the crime lab and fingerprint clearance cards.

In relation to representation of ADOT, DPS, and the various boards, commissions, and committees, the TRN attorneys provide representation and advice on procurement matters, personnel matters, property management, public records, open meetings and a variety of contractual matters including inter-governmental agreements, interagency service agreements, grant agreements, and general contracts.

### Significant Highlights

Attorneys in the TRN Condemnation Unit continue to provide legal advice and representation related to the L202 South Mountain Freeway project. This public private partnership is ADOT's largest single construction project, with costs estimated at just under \$2 billion.

TRN attorneys continued to assist ADOT in several Loop 202-South Mountain related cases: these are high dollar matters with increased scrutiny due to contractual obligations, access issues, environmental subjects and complicated agricultural cure concerns.

Attorneys working TRN's MVD group successfully prosecuted 28 unlicensed automobile dealer cases. ADOT collected over \$257,000 in fines resulting from the prosecution of these cases.

TRN AAGs representing DPS reviewed over 320 out-of-state conviction records for possible inclusion on the internet sex offender website pursuant to ARS § 13-3827.

