

# ANNUAL REPORT FY 2011

## SUMMARY OF ACCOMPLISHMENTS

*Editors Note: The following is a general summary of FY 2011 accomplishments for the Arizona Attorney General's Office. Full reports on the materials from the Office divisions and sections are available in the appendices. Appendix references are contained in this summary with **subject headings in bold**.*

The concept of transition best sums up the activities of the Arizona Attorney General's Office in Fiscal Year 2011.

Attorney General Tom Horne took the oath of office on January 3, setting the stage for a new era at the state's top law enforcement agency.



Attorney General Horne was successful in recruiting a number of well-known and experienced trial lawyers to bring their expertise to this office, including Criminal Division Chief James Keppel; Larry Cutler; Andrew Pacheco and Mike Tryon. Among them, these lawyers have more than a combined 120 years of legal experience.

*For more information on the Attorney General's Office further human resources accomplishments and other mission activities of the **Administrative Services Division**, please refer to **Appendix A**.*

*Related information regarding the **Business and Finance Division** is found in **Appendix B**.*

That wealth of legal experience reaped benefits in the latter half of FY 2011 as Attorney General Horne proceeded to implement his priorities, chief among them, defending Arizona law in federal court to ensure the security of the international border.

Since taking office, Attorney General Horne has put a greater emphasis on this crucial problem. For example, resources were allocated to help prosecutors along the border.

This effort was brought into sharp relief in May of 2011 as Horne joined federal law enforcement authorities in announcing the arrests of 21 of 46 suspected members of the Jesus Valencia Rodriguez drug trafficking organization, who worked on behalf of the Mexican Sinaloa Cartel.

The suspects operated in remote areas of the Tohono O'Odham Indian Reservation and funneled drugs and humans into the U.S. and re-directed racketeering proceeds and weapons back into Mexico.

Horne noted that this investigation effectively dismantled the Arizona-based transportation and distribution cells of this organization.

In FY 2011, Horne delivered a seminal policy statement to the Border Security Expo in Phoenix and outlined his grave concerns that Mexico risks failure as a state unless the U.S. and Mexico cooperate to combat drug violence and economic upheaval. Horne reiterated this argument in testimony before the U.S. House Homeland Security Subcommittee on Oversight, Investigations and Management. The full statement can be found here:

[http://www.azag.gov/press\\_releases/feb/2011/HORNE%20SAYS%20MEXICO%20RISK%20BECOMING%20A%20FAILED%20STATE.html](http://www.azag.gov/press_releases/feb/2011/HORNE%20SAYS%20MEXICO%20RISK%20BECOMING%20A%20FAILED%20STATE.html) and a copy of Horne's

congressional testimony is here:

[http://www.azag.gov/press\\_releases/may/2011/BorderHorneOralTestimony5-11.pdf](http://www.azag.gov/press_releases/may/2011/BorderHorneOralTestimony5-11.pdf)

Horne also initiated legal action designed to defend Arizona's border enforcement law, commonly known as S.B. 1070. Taking the opposite approach of his predecessor, Horne helped defend S.B. 1070, and filed a counterclaim against the federal government for failing to defend the border.

The theme of state sovereignty continued as the office made an official response to the National Labor Relations Board (NLRB), which has delivered an ultimatum to the State of Arizona demanding that the Arizona voter-approved protection of the secret ballot in union elections not be enforced. Attorney General Horne's rejection of that ultimatum can be found here: [http://www.azag.gov/press\\_releases/jan/2011/NLRB.pdf](http://www.azag.gov/press_releases/jan/2011/NLRB.pdf)

Federalism was also the subject of Horne's decision to withdraw Arizona from the U.S. District Court lawsuit in which Arizona had, under the previous leadership, supported the U.S. Environmental Protection Agency's greenhouse gas regulatory scheme. Horne noted that the protocols should be debated by legislators - not unelected regulators - and the federal plan places burdensome mandates on business.

The theme of government mandates was prominent in another area involving federalism: the federal health care law.

Attorney General Horne joined the multi-state effort to challenge the constitutionality of the Obama national health care plan. Horne is arguing that the plan's individual mandate is an unconstitutional exercise of Congress' authority under the commerce clause, and the expansion of Medicaid as well as the program's cost to the states are an unconstitutional coercion of the States at the hand of Congress. This challenge is ongoing. A video of Horne's comments on this matter is available here:

<http://vimeo.com/18964567>

Horne has also been aggressive in protecting the most vulnerable against criminal predators and established the Taskforce Against Senior Abuse ("TASA"). Publicity for a TASA hotline generated more than 900 new complaints being processed by the office. TASA works closely with other law enforcement agencies and senior-focused groups statewide to implement a comprehensive taskforce to protect seniors from being victimized.

During the course of FY 2011, the Attorney General's Office concluded a number of major consumer settlements. Among them was the largest pharmaceutical payout in Arizona history in the amount of \$2.1 million, which is part of a record \$68.5 million settlement between AstraZeneca Pharmaceuticals LP and 37 states.

Another major pharmaceutical settlement was reached with another 37 state Attorneys General in FY 2011 in which GlaxoSmithKline, LLC and SB Pharmco Puerto Rico paid a total of \$40.75 million arising from allegations of substandard manufacturing processes.

Also facing scrutiny were mortgage providers. In FY 2011, the Attorney General's Office joined in a multi-state agreement with Wells Fargo to provide almost \$154 million in mortgage relief to customers over allegedly deceptive marketing of payment option adjustable rate loans. In a related move, all 50 state Attorneys General launched a comprehensive investigation of mortgage servicing companies and home foreclosure documentation sometimes known as "robo-signing." This effort is ongoing.

Another continuing matter is the state's pursuit of the case against Bank of America in which the institution is alleged to have violated the Arizona Consumer Fraud Act and the consent judgment of March 2009 between Arizona and Bank of America-owned Countrywide.

Attorney General Horne scored a significant legal victory in the Bank of America case when the office won a favorable ruling in U.S. District Court. The court granted Arizona's motion that the case be removed from federal court. Bank of America previously had the case removed from state to federal court, returning the case to state court, which should result in a speedier resolution and remove unnecessary delays to the case. As of the close of FY 2011, the case is ongoing and further court action is anticipated.

*More information about the consumer cases referenced above for the **Public Advocacy Division**, the **Taskforce Against Senior Abuse**, as well as details about activity in the **Consumer Information and Complaints Unit**; agency advocacy for the **Arizona Department of Financial Institutions and the Arizona Department of Real Estate**; the accomplishments of the **Antitrust Unit** including **American Express litigation**, **ensuring schools' compliance with public finance laws**; the work of the **Tobacco Enforcement Unit**, **monies for the State of Arizona**, and **Community Outreach** may be found in **Appendix C**.*

Sovereignty matters involving Native American issues came to the forefront as the Attorney General's Office aided the Gila River Community and Salt River tribes regarding an attempt by the Tohono O'Odham tribe to establish a casino in Glendale.

There are three pending cases regarding the casino: First, the State is now appealing a federal court ruling that would allow the Tribe to establish trust land in Glendale. A second suit involves a question of annexation for that land, which is on appeal. Finally, a third suit brought by the state alleges that some of the actions taken by the Tribe in the above matters breach the 2002 Indian Gaming Compact. That case is in the discovery phase.

A swift resolution to a case involving the state's budget crisis was achieved in Roach v. Brewer in which the petitioners sought to enjoin the Governor and AHCCCS Director from taking action to deny AHCCCS benefits or terminate coverage for anyone eligible under Proposition 204. The Arizona Supreme Court denied injunctive relief and declined jurisdiction.

*A full report on the accomplishments of the **Civil Division**, including additional significant legal actions, **Dollars Generated or Saved, Civil Penalties / Fines, Reimbursements of Costs Incurred; Other Savings to State Agencies; Condemnation, and Risk Management Representation**, will be found in **Appendix D**.*

Upholding proper environmental stewardship remains an integral part of the Attorney General's mission. Toward that end, high quality legal advice and representation to client agencies were provided, resulting in significant collection of penalties for the State and savings to the State Assurance Fund.

*Details on the activities of the **Environmental Enforcement Section of the Public Advocacy Division**, included significant cases and the **EES Impact Information** are included in **Appendix E**.*

One of the most significant client agencies for the Attorney General's Office is the Arizona Department of Economic Security (DES). The Attorney General's Child and Family Protection Division provides comprehensive legal services to DES, of which Child Protective Services (CPS) is a big part. For CPS, Attorney General Staff engage

in an intense, high-volume, fast-paced, litigation focused practice in the Juvenile Division of Arizona's Superior and Appellate Courts. Trial attorneys handle thousands of actions annually in what are usually referred to as "dependency cases".

At the close of FY2011, the annual report reflects that trial attorneys in the protective services section worked extremely hard to meet the mission of protecting abused and neglected children. For instance, they carried approximately 105 cases each, where the national standard is not to exceed 80, and had worked some 220 hours per month, approximately 70 hours above the normal 150.

Lawyers also advise DES on legal issues stemming from federal and state statutes, regulations, policies and court rulings. They regularly appear before the administrative and judicial tribunals and practice in courts of original and appellate jurisdiction.

The Child Support Enforcement Section handles a high volume of litigation to establish paternity and to establish, modify and enforce child support orders.

*Complete details of these and other accomplishments, including the **Protective Services Section; Child Enforcement Section; Civil & Criminal Litigation and Advice; Appellate Matters**, and a breakdowns of caseloads, financial collections and other matters are located in **Appendix F**.*

Attorney General Horne also remains committed to the ongoing law enforcement efforts in Colorado City, where the Fundamentalist Church of Jesus Christ of Latter-Day Saints ("FLDS") made an attempt in FY 2011 to challenge changes to the church's United Effort Plan, a financial trust that has been under court-ordered administration.

Public corruption enforcement occurred as Nogales Mayor Octavio Garcia von Borstel was arrested and indicted on multiple charges including bribery, theft, fraud and money laundering. The Attorney General's Office prosecuted this case, which was initially investigated by the Federal Bureau of Investigation. At the close of FY 2011, von Borstel accepted a plea deal that calls for a prison term of at least two years.

The Criminal Appeals/Capital Litigation Section worked to uphold the convictions and sentences of criminal defendants in Arizona. The Border Crimes Enforcement Section charged 372 criminal defendants with felony offenses including fraudulent schemes and artifices, illegal enterprise, participating in criminal syndicates, money laundering, violent crimes, and drug cases, many of which stemmed from wiretaps. The Criminal Prosecutions Section's Fraud Unit charged 552 criminal defendants with felony offenses including fraudulent schemes and artifices, illegal enterprise, participating in criminal syndicates, money laundering and numerous violent crimes. The Criminal Prosecutions Section's Drug Unit charged 395 criminal defendants. The Criminal Prosecutions Section's Medicaid Fraud Control Unit received 176 allegations/complaints regarding fraud, misuse of funds and patient abuse in the AHCCCS program. The Financial

Remedies Section enforces Arizona's civil racketeering remedies to combat the effects of organized criminal conduct on legitimate commerce. The Special Investigations Section provides investigative support to prosecutors across the Attorney General's Office as well as to law enforcement agencies throughout the State. The Office of Victim Services continues to provide services to a number of victims of fraud and identity theft.

*Detailed reports on the work of the **Criminal Division**, including the **Criminal Appeals/Capital Litigation Section**, **Border Crimes Enforcement Section**, **Criminal Prosecutions Section's Fraud Unit**, **Criminal Prosecutions Section's Drug Unit**, **Criminal Prosecutions Section's Medicaid Fraud Control Unit**, **Financial Remedies Section**, **Special Investigations Section**, and the **Office of Victim Services** can be found in **Appendix G**.*

In keeping with Attorney General Horne's commitment to defending the State of Arizona in court, the Solicitor General's Office has been providing leadership in appeals, election law, ethics, independent advice, legal opinions, public access laws and continuing legal education.

The office also saw a change in leadership late in FY 2011 as Solicitor General Mary O'Grady transitioned to private practice and Dave Cole became Solicitor General.

There were substantial accomplishments for the Solicitor General's Office in FY 2011, including being party to three civil cases accepted for review by the U.S. Supreme Court and filing *amicus curiae* briefs in another Supreme Court case.

In the Ninth Circuit Court of Appeals, Attorney General Horne personally argued in favor of Arizona's law that requires evidence of citizenship to vote. A three-judge panel had ruled that federal law preempts the state requirement. En banc review (11 judges rather than three) was granted, and A.G. Horne made the case in FY 2011 that it is a basic right of Arizona to ensure that everyone who votes is in fact a citizen. A decision is expected sometime in FY 2012.

Shifting to the state appellate arena, the Arizona Supreme Court granted review in *Estate of Braden v. State* in which the court of appeals had reversed the trial court's grant of summary judgment in favor of the Department of Economic Security's Developmental Disabilities Division. Other ongoing cases include *State v. AutoZone*, a consumer fraud matter pending in the state Court of Appeals.

*A full report on the activities of the Solicitor General's Office, including details of **practice before the U.S. Supreme Court**, **Ninth Circuit**, **Arizona appellate courts**, **Defending Arizona Election Laws**, **Library and Research Services**, **Opinions**, **Continuing Legal Education**, **Appellate Practice**, **Ethics**, assistance with the **revision of the Agency Handbook**, **OMLET** (open meeting enforcement) and **Independent Advice**, are available in **Appendix H**.*

Protecting the civil rights of all Arizonans is the mission of the Agency Counsel and Civil Rights Division, which is charged with enforcement of the Arizona Civil Rights Act,

ensuring public compliance with discrimination and accommodation laws and regulations. It litigates such matters in court or through conciliation and/or mediation, and represents approximately 70 State agencies in court.

Among the more notable cases handled by this division was a sex-based employment discrimination case brought against ASARCO, LLC. The State won this case and so convinced the jury of the merits that jurors awarded damages above the statutory cap. Those figures were adjusted accordingly, but the outcome underlines the strength of the case made by the Attorney General's Office.

*For detailed information about the work of the **Agency Counsel and Civil Rights Division**, including the **Arizona Civil Rights Division**, **Civil Rights Compliance Section**, **Civil Rights Litigation Section**, and **Agency Counsel Section**, please refer to **Appendix I**.*

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**Appendix B: *Business and Finance Division***

**Appendix C: *Public Advocacy Division; Taskforce Against Senior Abuse; Consumer Information and Complaints Unit; Arizona Department of Financial Institutions; Arizona Department of Real Estate; Antitrust Unit; Tobacco Enforcement Unit; Community Outreach***

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**Appendix E: *Environmental Enforcement Section of the Public Advocacy Division; EES Impact Information***

**Appendix F: *Child Enforcement Support Section; Protective Services Section; Child Enforcement Section; Civil & Criminal Litigation and Advice; Appellate Matters***

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**Appendix H: *Solicitor General's Office; practice before the U.S. Supreme Court, Ninth Circuit, Arizona appellate courts; Defending Arizona Election Laws; Library and Research Services; Opinions; Continuing Legal Education; Appellate Practice; Ethics; revision of the Agency Handbook; OMLET (open meeting enforcement); Independent Advice***

**Appendix I: *Agency Counsel and Civil Rights Division; Arizona Civil Rights Division; Civil Rights Compliance Section; Civil Rights Litigation Section; Agency Counsel Section***

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**Thank you for your interest in the FY 2011 activities of the Arizona Attorney  
General's Office.**



**TOM HORNE**  
ATTORNEY GENERAL

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

**DEBBIE JACKSON**  
DIVISION DIRECTOR

**ATTORNEY GENERAL 2011 ANNUAL REPORT**

**APPENDIX A**

**Administrative Services Division**

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

**Division Mission:**

To support the Arizona Attorney General in his mission to serve and defend Arizona by ensuring success for the Arizona Attorney General's Office; support the Assistant Attorneys General's work; and communicate, service and support each other.

**Division Summary:**

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

**Facilities Management and Planning Section:**

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

- Daily operations: the coordination of the maintenance, tenant improvement and telecommunications service requests across the Office as well as consultation with division management in the area of space planning.
- Safety and security: the program development and system oversight to include physical security system operations, as well as employee awareness campaigns designed to maximize personnel safety and security.
- Central services: the centralized shuttle transportation, mail room operation, receptionist and copy center services that support the needs of the Office.
- Continuation of Operations Planning (“COOP”): the development of plans and procedures to ensure that the Office can continue to perform essential functions during a wide range of emergencies.

#### Human Resources Section:

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

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

#### Procurement:

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

#### **Division Highlights:**

#### FMP:

##### **2011**

- FMP worked in conjunction with ADOA and Black Box to install several voice and data jacks in the Phoenix and Tucson locations to improve faxing, scanning, and printing capabilities to AGO employees.

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

## **2010**

- Centralized the receptionist services in the Capital Center building, improving efficiency, security and services with limited resources.
- Audited the Agency COOP program, identifying opportunities for improvement of services and recovery response.
- As part of the Loss Prevention Program, conducted a thorough review of emergency systems and developed a scope of work to correct deficiencies. Scope of work included fire safety inspections, review of

building access procedures and the development of a *Violence in the Workplace Prevention Program*.

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

## HRS:

### **2011**

- Expanded the Human Resources Section to manage the centralization of all Human Resource functions including Recruitment, New Hire Onboarding and Transition, Intern/Volunteer Programs, Professional Development, Personnel Actions, Employee Relations and Exit processes.
- Streamlined all HR processes for increased efficiency and customer satisfaction using electronic tools to enhance productivity and accessibility for our clients.
- Successfully managed and facilitated the annual Employee Recognition Awards.
- Effectively implemented three Division re-organizations.
- Created office-wide Organizational Charts to track all agency employees and positions.
- Assisted with the implementation of the new Employee Time Entry System.
- Put into operation the Footprints application to track all HR transactions and requests.

- Started providing customer service surveys to measure HR performance and client satisfaction.
- Created a comprehensive New Employee Orientation for all new employees, interns, volunteers and temporary staff.
- Developed and implemented an updated Office Policies and Procedures.
- Administered and managed a Summer Law Clerk Program for more than 40 law students.

## **2010**

- Assisted the Divisions in implementing the 2010 legislative mandated budget reduction bill, which resulted in an Office-wide implementation of a 2010 Reduction- in-Force (RIF), an involuntary furlough and a voluntary furlough program. Provided out-reach placement services for impacted employees and training support for supervisors to minimize the impact of the RIFs.
- Established and implemented diversity and cultural competency program initiatives across the Office including the creation of the *Accessibility and Accommodation Guidebook*, performing exit interviews that capture employee perceptions of inclusion and respect, and instituting welcoming environment practices.
- Executed a series of internal audits to ensure Office personnel practices were compliant with applicable Arizona Department of Administrative rules/procedures and state and federal laws.
- Conducted a thorough review of the Office badge access system and corrected deficiencies resulting in improved safety and security of all personnel and physical assets.
- Implemented health initiatives such as the annual and pandemic flu shots, CPR/AED trainings, and the on-site mobile mammography program.
- Coordinated the agency *Travel Reduction Survey* resulting in a 92% completion rate.
- Administered the *State Employees Charitable Campaign* for the Office. The Office exceeded the internal goal for dollars and participation.
- Upon completion of an internal audit the Office Loss Prevention Program, HRS developed and implemented trainings in the areas of ADA, Ethics, Confidentiality and Conducting Performance Appraisals to ensure compliance with applicable state, federal and agency regulations.
- During the year, HRS reviewed over 10,000 resumes, recruited and hired 27 attorney and 47 non-attorney “mission critical” positions.
- Coordinated the Office Blood Drive Campaign. The Office received high recognition with a “Bronze Award” for 20% or more participation in blood drives conducted throughout the year, which made a life preserving difference to hundreds of patients throughout Valley hospitals.

- Oversight and implementation of a *Pandemic Flu Planning and Awareness* campaign which minimized the Office's risk and improved employee health and safety. One positive campaign result: 350 employees received on-site flu shots and 146 employees received H1N1 shots, reducing the risk of illness to employees across the agency.

Procurement:

**2011**

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



TOM HORNE  
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL  
BUSINESS AND FINANCE DIVISION

VICKI SALAZAR  
DIVISION DIRECTOR

## ATTORNEY GENERAL 2011 ANNUAL REPORT

### APPENDIX B

#### **Division Mission:**

To support the Attorney General's Office and the State with a multidisciplinary team of financial information services. We provide strategic planning, budgetary, debt collection, accounting, grant processing and financial control service through a commitment to continual process improvements with timely and accurate financial information, analysis and forecasting, while ensuring compliance with Federal and State laws and Agency guidelines and policies.

#### **Division Summary:**

The Business and Finance division is comprised of the Bankruptcy and Collection Enforcement Section (BCE), the Budget and Strategic Planning Section, the Grants Management Section and the Financial Services Section (FSS).

#### **Bankruptcy and Collection Enforcement Section (BCE):**

The Collection Enforcement Section (CES) is a part of the cross functional Bankruptcy and Collection Enforcement Section (BCE). CES is comprised of collectors and support teams. CES's mission is to collect debts owed to the state, efficiently, expeditiously and fairly, in order to maximize revenue. BCE represents virtually all state agencies in debt-related matters. BCE's debt collection responsibilities range from routine collection and bankruptcy matters to complex litigation to establish debt.

#### **Section Highlights:**

- In FY2011, BCE collected \$11.3 million that state agencies had been unable to obtain.
  - This includes collection of \$721,000 on behalf of the Department of Revenue in the Ultimate Electronics bankruptcy case,
  - \$275,000 on behalf of the Department of Transportation in the Frontier Airlines bankruptcy case,
  - \$521,000 on behalf of the Department of Revenue in the Bashas' bankruptcy case.

### Budget and Strategic Planning Sections:

The Budget and Strategic Planning Section is comprised of budget analysts whose main responsibility is to prepare the agency annual budget of \$94.4 million, work with divisions to project revenues and cash flows for both internal and external reporting purposes and develop the agency strategic plan while which supports the mission and goals of the Attorney General.

### Section Highlights:

- In FY 2011 the section improved services by streamlining paperwork and administrative burdens.
- Increased the ***use of data and information technology*** as a management tool to make better informed decisions.
- Ensured that necessary ***fiscal and managerial reports*** were developed and in place to provide maximum accountability and performance by division, section and fund.
- Set up monthly managerial meetings,
- Spearheaded the Strategic Planning Development Sessions for ten Divisions and forty-four Sections within the AGO.
- Through the Division Chiefs and Sections Chiefs, the Budget and Strategic Planning Section spearheaded the development of the AGO Master List.

### Financial Services Section(FSS):

The Financial Services Section (FSS) is responsible for managing the financial functions of the Attorney General's Office ensuring fiscal compliance and accountability by division, section and unit. Financial resources are managed across twenty funding sources within ten divisions for a total agency budget of approximately \$100 Million.

- General Ledger & Accounts Receivables: accounts for debts owed to the State of Arizona and the Office of the Attorney General. Generates invoices and statements for services rendered and debts owed. Deposits all monies collected by the office while maintaining adequate cash flows, internal controls and proper stewardship of the Office's assets.
- Payroll: ensures that all employees are paid accurately and timely along with their leave accruals. Generates reports for Human Resources verification and monitors all variances against prior pay cycles. Reconciles payroll system activity against the accounting system and performs leave accrual audits, adjustments and payouts as needed.
- Accounts Payable & Travel: tracks encumbrances, inbound invoices, employee reimbursement claims, travel claims, and restitution payments. Verifies and reconciles invoice and claims data, schedules payments, verifies expenditures against unnecessary or duplicate expenses and issues appropriate checks while maximizing applicable discounts. Ensures proper remittance of Use Taxes.

## Section Highlights:

- AFIS Automated Uploads. Claims processing spreadsheet was designed to reduce Accounts Payable keying. As each claim is prepared the spreadsheet automatically generates transactions in a format that can be uploaded into AFIS. This greatly reduces the need for keying transactions into AFIS. We have created several versions of this spreadsheet and are continuing to improve it. Uploading a claim generally takes about half the time compared to keying a claim into AFIS.
- RevQ Upload. Accounting processes 25-40 checks daily for CERF. These transactions are initially input into Legal Files which is the Case Management Software. Rather than rekey these transactions into RevQ which is the debtor accounting software, we developed new functionality within Legal Files and used the existing functionality within RevQ which allows us to upload the payments transactions into RevQ.
- Automated Transfers To Agencies. Working with General Accounting Office we setup Auto Transfers for 9 Agencies that receive distributions from CERF, eliminating 117 transfer documents annually. The manual processing of documents causes delays in the clearing of CERF transactions resulting in time consuming reconciliations and requiring staff to research issues.
- Automated Transfers From Agencies. Similar to outgoing transfers we also established auto transfers for incoming monies associated with Interagency Service Agreements (ISAs). This eliminated the need for us to prepare transfer documents when requesting payments along with delays in the processing of these transfers by GAO. Annually we expect a reduction of approximately 250 companion transfers.
- AFIS System Utilization. Agency Budgets were tracked on multiple manual spreadsheets which limited our ability to generate reports directly from AFIS since these budgets were not loaded into AFIS, which is our primary recordkeeping system. By loading the budgets into AFIS we were able to fully utilize system reports and to communicate with the divisions more timely and with more detailed information. We saved time by not having to rekey activity into a manual spreadsheet.
- Payroll Projections/Pre-Encumbrances. Historically, projected payroll expenditures were not input into AFIS, which limited our ability to calculate budget balances directly from the Primary Recordkeeping System. Late in FY 2011, an automated system was developed using Crystal Reports to calculate the projected payroll expenditures as each pay cycle comes to a close. This data was then uploaded into AFIS to generate a full budget balance report that has all of the components including, Budget, Actual, & Projections, to give a true picture of the remaining balances available for division and section expenditures to improve decision making.

- ProcureAZ. Completed the required training for implementation of ProcureAZ within the Budget and Accounting Unit. Implementation of this system will now allow us to electronically approve budget requests and load encumbrances into AFIS for those requests automatically. In the past, these transactions would have to be approved by Budget manually and then keyed into AFIS by Accounting.
- Footprints Implementation. Footprints is currently used to track all internal and external deliverables for Accounting and Budget. There are over 250 of these deliverables. Many of the deliverables are recurring with frequencies that range from Daily to Annually. Once these items have been calendared through Footprints, issues are automatically generated and assigned to team members when they become due. Within the issues, we can document problems that we encountered along with the turnaround times for the deliverables and it allows us to identify areas that are time intensive so that we can implement process improvements. We are also hoping that this will identify people resources that are overloaded along with resources that have capacity so that we can better manage workloads. Supervisors can run reports from Footprints that tell them what projects are behind schedule and who is working on those projects. In addition, if resources are unavailable, Footprints provides supervisors with the ability to reprioritize and reassign projects electronically. Eventually we hope that all of the work that we do is captured into Footprints and that everyone utilizes Footprints to manage priorities, resources and deliverables. This will provide management with transparency on Accounting and Budget specific deliverables.
- Crystal Reports. In the past, various reports were generated in Accounting by manually rekeying data. During this time, we also created a large data warehouse of accounting data for prior Fiscal Years and we currently have over 5 years of data. Unfortunately, it was very difficult to work with this data, given its volume and complexity, to generate the reports that we needed. Recently we started to utilize Crystal Reports with our data warehouse to access and generate reports. This has helped us with several projects, including the annual budget submittal and indirect costs proposal. In previous years, these projects required several weeks of input and reconciliation to complete. By using crystal reports to access the data warehouse, we were able to generate the same report within a day. We have also utilized this tool to report on case related financial activity. Historically, this was a time consuming process that required manual input. By utilizing Crystal Reports, we have increased the turnaround and accuracy of our reports. More recently, we have utilized Crystal Reports to generate over 10 reports that summarize payroll related activities during a pay cycle. The reports are then reviewed and provided to Human Resources for further processing.
- AFIS Accounting Program and Organization Structure Changes. Both the AFIS Program and Organization structure were revised to reflect agency

- and management needs. We expect this to significantly increase our reporting capabilities directly from the primary recordkeeping system.
- ETE Implementation. The Payroll Unit worked with Human Resources to Implement the Employee Time Entry System. With the implementation of this system, payroll no longer has to manually key every employee's time into HRIS. To identify potential errors in employee keying we developed several Crystal Reports that identify problematic time entry scenarios. By identifying these errors early we can significantly reduce rework.
  - BOA Credit Cards. Currently, the AGO only accepts cash, checks, money orders or cashier's checks to settle monies owed to the state for debts, fines, and restitution. This has limited the options available to debtors who are looking to settle debts quickly or establish payment plans. In addition, debtors who are willing to make payments over the phone are unable to do so creating delays in the payments process and limiting the collector's ability to quickly collect payments. In an effort to increase collections, the AGO has requested and has received approval from the Office of the State Treasurer to accept credit card payments and we are currently in the process of implementing this functionality with Bank of America.
  - Reduced Administrative Costs. Filled FTEs in the FSS has been reduced by over 50% to preserve funding for legal divisions. At its peak, FSS had over 30 employees and through retirements and attrition we have reduced staffing levels over 50%.

#### Grants Management Section :

The Grants Management Section provides centralized grants management services to the AGO. The Grants Management Section oversees all grant applications and fiscal requirements of each grant, maintaining accountability for each grant for each division within the AGO.

#### Section Highlights

- In FY 2011 pulled all fiscal responsibilities from the program area and centralized the grant files within the Business and Finance Division.
- Established an agency-wide grant application process to ensure appropriate guidelines are followed and appropriate signatures are obtained. This process applies to all divisions.
- Established a centralized location for all grant files. This serves the agency for easy access for grant review, grant reporting, and grant audits.
- Established an audit process for all sub-grantees. This process ensures the compliance of all grantees and that of the AGO for grant administering.
- In FY 2011 each month the staff completed over 15 grant financial reports and fund draw downs.



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ATTORNEY GENERAL

**OFFICE OF THE ARIZONA ATTORNEY GENERAL**  
**PUBLIC ADVOCACY DIVISION**

**THOMAS CHENAL**  
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## **ATTORNEY GENERAL 2011 ANNUAL REPORT**

### **Consumer Protection and Advocacy Section**

#### **APPENDIX C**

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

###### **Protecting consumers from mortgage fraud**

As the foreclosure crisis continued in Arizona last year, so did the Attorney General's law enforcement efforts against mortgage fraud. The Attorney General's Office filed several lawsuits against individuals and companies who prey on homeowners facing foreclosure.

###### **Up-front fee ban**

The Attorney General's Office enforced new state and federal laws banning foreclosure rescue companies from charging up-front fees. In April, we sued Robert Daniel Hayes and Camerin Charles Hawthorne for violating the Arizona Consumer Fraud Act and the new federal rule banning mortgage assistance relief service providers from collecting fees before providing services. Through their companies Mediation Services and Metropolis Loans, Hawthorne and Hayes solicited consumers over the telephone for mortgage loan modification services in return for advance fees of approximately \$2,500.00 that became illegal under federal law on January 31, 2011. According to the lawsuit, the defendants also falsely represented that their company was affiliated with consumers' lender CitiMortgage, that consumers were pre-approved for a modification, and that attorneys would represent its clients in getting a loan modification. The court issued a preliminary order that

prevents Hawthorne and Hayes from soliciting new business and requires them to follow the law. Litigation is continuing.

### **Principal reduction scams**

The Attorney General's Office moved quickly to stop a new scam that emerged last year – companies offering “principal reduction services.” Exploiting the real estate crash, these companies target homeowners who owe more on their mortgage loan than their home is currently worth. In exchange for an upfront fee, they claim that, with the assistance of investors, they can provide the borrower with a new mortgage loan that reduces the principal amount so it is in line with current home values. The Consumer Litigation Unit (“CLU”) obtained a default judgment against the Guardian Group, LLC (“Guardian”) and its principals in connection with their operation of a fraudulent “principal reduction” company, Guardian. In exchange for an up-front fee of \$1595.00, Guardian represented that it would purchase the consumer's mortgage loan note from the bank and reduce the loan principal. Guardian represented they had a \$5 billion investment fund to purchase mortgage loans, when in fact they had no investors in their company. The judgment awarded \$3,979,525.00 for consumer restitution, plus \$24,950,000.00 in civil penalties, and prohibits the individuals from working in the mortgage industry in the future. We also represented the Arizona Department of Financial Institutions in their action against Guardian's principals for engaging in unlicensed mortgage broker activities.

In December, CLU targeted two other principal reduction companies. We sued Principal Reduction Group, LLC, of Scottsdale, and its owner, Brian Cutright, for charging up to \$6,000.00 to Arizona homeowners to participate in its principal reduction program. Principal Reduction Group, LLC, allegedly mailed hundreds of thousands of mailers to Arizona homeowners that were designed to appear as if they were from the homeowners' lenders and claimed successful results when in fact they had none. We resolved that case with a consent judgment that prohibits defendants from engaging in any loan modification or principal reduction activity in Arizona. The settlement provided for full restitution to the consumers who filed complaints with the Attorney General's Office, required the defendants to pay \$25,000.00 as civil penalties and \$5,000.00 for attorneys costs and fees.

Together with the Arizona Department of Financial Institutions, CLU also sued Queen Creek Mortgage, LLC, of Mesa, a licensed mortgage broker, which had marketed its service to some 180 homeowners this year at fees of up to \$5,500.00. Queen Creek Mortgage, LLC, allegedly misled consumers about its relationship with investors, misrepresented the relevancy of federal programs and funds to its program, and failed to disclose that it would send clients' files and personal information to an out-of-state third party for work on their files. We resolved that case

with a consent judgment that requires payment of consumer restitution of \$95,000.00, attorney's fees and costs of \$5,000.00, and prohibits defendants from engaging in any kind of mortgage loan activity in Arizona.

### **Enforcement actions against nation's largest lenders**

In response to hundreds of consumer complaints against lenders for deceptive loan modification practices, we took enforcement actions against the top three banks last year.

In December, 2010, we sued Bank of America, Countrywide and certain affiliates (collectively "BOA"). The lawsuit accuses BOA of violating the Arizona Consumer Fraud Act and a previous judgment by failing to timely respond to loan modification requests, initiating foreclosures despite pending loan modification requests and failing to obtain investor approval for loan modifications. The suit also alleged that BOA repeatedly misled Arizona borrowers about its loss mitigation programs including about applicable time frames, whether or not foreclosure would proceed during consideration of loss mitigation requests, reasons for denial of loss mitigation requests, and whether a permanent loan modification would be offered if trial payments were made on time. We won the first major legal argument by defeating BOA's attempt to remove the case to federal court. The case remains in state court and litigation continues.

We also entered into settlement agreements with Wells Fargo Bank, NA ("Wells") and Chase Home Finance, LLC ("Chase") last year, both of which require the companies to improve loan modification practices. We obtained a \$2.1 million settlement with Wells in connection with payment option adjustable rate mortgage loans ("POA") sold by Wachovia Corporation ("Wachovia") and Golden West Financial Corporation ("Golden West"), companies acquired by Wells. Arizona's investigation, conducted with seven other states, was based on concerns that Wachovia's and Golden West's marketing of POAs violated the Arizona Consumer Fraud Act because the companies did not fully explain that the minimum payment due in the first years of the loan did not cover the full amount of accrued interest, which in turn would increase the amount of the loan (sometimes referred to as negative amortization of the loan). Wells agreed to provide eligible, at-risk consumers who bought POA loans with some combination of rate reductions, loan-term extensions and principal reductions. Wells also agreed to a number of substantial servicing commitments for its POA borrowers, including:

- Ensuring adequately staffed help lines to serve consumers, including Spanish-speaking consumers.

- Providing a single, primary point of contact to assist borrowers seeking modifications under the agreement.
- Making decisions on modifications within 30 calendar days of receiving a complete application.
- Establishing a formal second look or appeal process for borrowers who are turned down for a modification.

We negotiated a settlement agreement with Chase that requires the company to improve loan modification practices as to all borrowers, including responding to loan modification requests within 30 days of receiving necessary documentation, assigning one person as a point of contact for a borrower requesting assistance and refraining from foreclosure proceedings while loss mitigation requests are being considered. The Assurance also sets forth time frames by which Chase must acknowledge and respond to consumer complaints filed with the Attorney General's Office, as well as reporting requirements.

### **Auto repair cases**

Automobiles are the second largest asset owned by most consumers, after their homes. In these difficult economic times, consumers made every effort to repair their existing vehicles. The Attorney General sued and obtained judgments against companies for consumer fraud in automobile and transmission repair cases. For instance, we obtained judgments against individuals associated with a fraudulent engine rebuild business called All About Engines, LLC, who were sued for failing to meet advertised prices, performing substandard repairs and failing to honor warranties. The manager of All About Engines, LLC, Rachel Arvallo, was permanently banned from engaging in the automotive repair business within Arizona. She was also required to pay \$25,000.00 in civil penalties. Final judgment was also entered against Paul and Catherine Nolan and Engine Dr. Inc., requiring them to pay consumer restitution in the amount of \$170,000.00, costs and attorney's fees of \$70,000.00 and civil penalties of \$15,000.00. The judgment also prohibits Paul Nolan and Engine Dr. Inc. from engaging in the business of motor vehicle repair or the purchase, sale, refurbishment or installation of motor vehicle parts within the State of Arizona.

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

This year the Attorney General established the Taskforce Against Senior Abuse ("TASA") to bring awareness to the issues surrounding the elderly in our state. The Taskforce includes attorneys from the Consumer Protection & Advocacy Section ("CPA"), the Medicaid Fraud and Abuse Unit and the Criminal Prosecutions

Section to identify and prosecute cases. A designated telephone line was implemented in CPA which provides an avenue through which the elderly, and those who work with them, can obtain information or report abuse/fraud. Members of the Attorney General Community Outreach Services offer educational opportunities around the state in which seniors can participate. TASA formed an Advisory Group, comprised of community, business and governmental leaders, to advise Attorney General Horne and the members of TASA in matters concerning the senior citizens of Arizona. Since its inception in March, 2011, TASA has received 452 phone calls, e-mails and other inquiries and made 416 referrals to other agencies.

We are actively investigating several matters involving senior victims for civil or criminal prosecution. This year we won a judgment against telemarketers who targeted seniors in the case of Consumer Benefits Research Group, Inc. ("CBG"). Elderly consumers were badgered by telemarketers employed by CBG, which sold identity theft protection services. After using high-pressure sales techniques to obtain consumers' bank account information, CBG provided an ineffective program which did nothing to protect consumers' identities. In fact, in several instances, consumers who purchased the CBG program discovered unauthorized charges from other telemarketing companies on their bank statements. The Court entered a final judgment in April that awarded \$55,665.59 for consumer restitution, \$205,000.00 for civil penalties, \$45,115.60 for costs, as well as injunctive relief.

### **Health care cases**

Arizona and 37 other states obtained a record \$68.5 million dollar consumer protection settlement against AstraZeneca Pharmaceuticals, LP, ("AstraZeneca") for promoting Seroquel, a drug approved by the FDA for a narrow range of illnesses, for conditions that were not approved by the FDA ("off label"), among other deceptive marketing tactics. The settlement also resolved allegations that AstraZeneca failed to adequately disclose Seroquel's potential side effects to health care providers; and withheld negative information contained in scientific studies concerning the safety and effectiveness of Seroquel. The consent judgment requires that AstraZeneca not promote Seroquel in a false, misleading or deceptive manner, including for "off-label" uses, and also requires AstraZeneca to publicly post its payments to physicians on a website, refrain from giving financial incentives to marketing and sales personnel for off-label marketing and ensure that its sales personnel do not promote Seroquel to health care providers who are unlikely to prescribe Seroquel for an FDA-approved use.

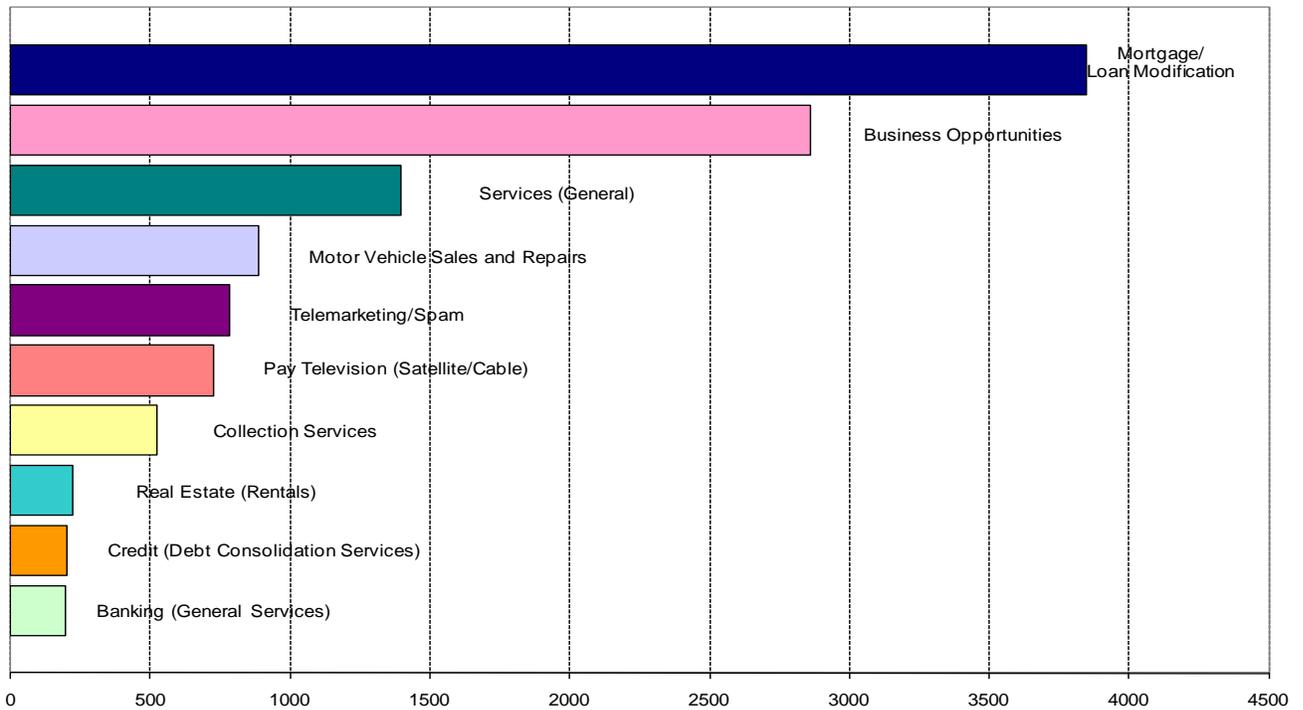
This year we filed a consumer fraud lawsuit against Smoke Freely, LLC and others in connection with their sale of the "Prado" electronic cigarette. Electronic cigarettes are battery-powered devices that provide the inhaler with doses of

nicotine by delivering a vaporized chemical solution. They produce a vapor rather than smoke. According to the lawsuit, Defendants falsely advertised their product as being approved as a smoking cessation device. Also, they allegedly charged consumers the full price of the merchandise before the expiration of the trial period and failed to deliver the merchandise to consumers within the trial period. When defendants deemed consumers' returns to be invalid, defendants allegedly shipped additional merchandise to consumers and charge consumers for that merchandise. They also allegedly charged invalid restocking fees. Litigation is ongoing in Pima County Superior Court.

## II. CONSUMER INFORMATION AND COMPLAINTS UNIT

The Attorney General's Office received 27,122 written consumer complaints last year and answered 47,101 telephone calls. Each written complaint was reviewed, most were sent to businesses for a response and many were referred to other agencies for handling. All told, we recovered \$1,258,322.00 for consumers last year. The major trends of consumer complaints last year are as follows:

Complaints and Inquiries Fiscal Year 2011 (July 1, 2010 - June 30, 2011)



## III. AGENCY UNIT

Arizona Department of Financial Institutions

We represented the Arizona Department of Financial Institutions (“DFI”) in an enforcement action against NCO Financial Systems, Inc. (“NCO”), a collection agency, which was found to have violated numerous Arizona laws governing collection agencies. DFI issued an order requiring NCO to cease and desist from the illegal conduct, triggered by consumer complaints of oppressive and harassing conduct in debt collections. NCO failed to correct infractions identified in an earlier examination. The matter was ultimately resolved by a consent order requiring the payment of a \$200,000.00 civil monetary penalty, and requiring NCO to deal openly, honestly and fairly in its business and to comply with Arizona law. In a case against collection agency Collectcorp Corporation for unfair, misleading and oppressive tactics and failure to correct procedures to prevent harassment, we represented DFI in an action that ultimately required payment of a \$50,000.00 civil monetary penalty.

On behalf of the DFI, we obtained orders against several convicted criminals to remove them from working in any financial institution in Arizona (including state licensed banks, title companies and mortgage brokers) and from participating in the financial industry in the future. This included a case against a former mortgage broker who is now in prison for theft, forgery and fraudulent schemes and artifices, and cases against four others who were convicted of crimes involving dishonesty.

### **Arizona Department of Real Estate**

Our representation of the Arizona Department of Real Estate (“DRE”) similarly focused on protecting the public from fraudulent individuals and ensuring compliance with licensing requirements. The DRE received several consumer complaints against Vicki Saunders, a licensed real estate broker, concerning her property management practices and improper handling of client trust accounts. An investigation and audit revealed more than 17 statutory violations leading to the summary suspensions of her license. Bank statements reviewed by DRE showed deposits and disbursements not related to client properties including overdraft charges and ATM fees and charges for office supplies, gasoline, Hawaiian Airlines tickets and travel club dues. We represented DRE in an administrative action against Ms. Saunders that upheld the summary suspension and assessed a \$17,000.00 civil penalty for violations of Arizona law.

We collaborated with DRE in an action to stop unlicensed individuals from renting homes to consumers for the Major League Baseball All-Star Game in July, 2011. Your Stay Accommodations, operating out of Phoenix, was offering to lease consumers’ homes to people attending the event for an advance fee of approximately \$1,495.00. Arizona law, however, requires individuals engaged in real estate activity for compensation to first obtain a license from DRE. The individuals behind Your Stay Accommodations were not licensed. The DRE Commissioner ordered Your Stay Accommodations to immediately cease and desist from its rental activities. By acting

quickly to stop the unlicensed activity and issuing a warning to consumers, the two agencies protected consumers from paying money for services to individuals who were unqualified to provide them.

#### **IV. ANTITRUST UNIT**

##### **American Express litigation**

The Antitrust Unit, along with other states and the U.S. Department of Justice, sued American Express for anti-competitive conduct in connection with fees charged to merchants for accepting its credit cards. For instance, American Express prohibits merchants who accept American Express credit cards from offering consumers discounts for using less expensive general purpose credit cards instead of American Express cards. By preventing merchants from rewarding consumers when they use less expensive credit cards to make purchases, American Express allegedly interfered with the ability of merchants to reduce credit cards acceptance costs, and ultimately their retail prices to consumers. Litigation is ongoing.

##### **Ensuring schools comply with public finance laws**

The Antitrust Unit settled a case involving tuition tax credits. Kachina Country Day School (“Kachina”) operated both a private school and a public charter school. Beginning in 2008, Kachina began issuing STO tax credit receipts for donations to its private school tuition fund. STO tax credits are only permitted for donations to School Tuition Organizations; they are not permitted for donations made directly to private schools. At the same time, Kachina’s public school issued ECA tax credit receipts for donations to its extracurricular activities fund. While ECA tax credit donations may be made directly to a charter school, Kachina issued receipts for amounts in excess of the statutory maximum. The settlement, in the form of an assurance of discontinuance, required Kachina to refrain from acting as a school tuition organization and to pay for the costs of the Attorney General’s investigation. Kachina must also notify its donors that the donations to Kachina did not qualify for tax credits and the donors may be obligated to file amended Arizona state income tax returns.

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

##### **Successfully protecting Arizona’s share of payments received pursuant to the Tobacco Master Settlement Agreement**

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

the major tobacco manufacturers. The MSA requires each tobacco manufacturer that joins the agreement, a participating manufacturers (“PM”), to make significant annual payments to the Settling States in perpetuity.

In 2011, Arizona received approximately \$ 99.1 million in total MSA payments. Since 1988, Arizona has received more than \$1 billion in settlement payments.

Pursuant to A.R.S. § 36.2901.02, all monies received by the State of Arizona pursuant to the MSA are dedicated entirely to the Arizona Health Care Cost Containment System (“AHCCCS”). The Tobacco Enforcement Unit (“TEU”) protects Arizona’s MSA payments by diligently enforcing A.R.S. § 44-7101, Arizona’s Qualifying Statute, in order to ensure that a downward adjustment does not apply to Arizona’s MSA payments.

### **Enforcement of Arizona’s tobacco laws**

A.R.S. § 44-7101 (“Escrow Statute”) requires any tobacco product manufacturer selling cigarettes to consumers in Arizona to: (i) become a PM (i.e., join the MSA), and generally perform its financial obligations under the MSA; or (ii) place certain amounts into a qualified escrow fund for the benefit of Arizona based on the number of sales made in the State.

To enforce the Escrow Statute, TEU must: (i) determine the identity of those non-participating manufacturers (“NPM”) which had sales in Arizona during a given year; (ii) calculate the total volume of sales for each NPM; and (iii) determine the escrow liability based on a set statutory rate. If a NPM refuses to comply with the Escrow Statute, TEU initiates litigation to obtain compliance.

### **Seneca-Cayuga Tribe**

In 2011, TEU reached a landmark agreement with the Seneca-Cayuga Tribe of Oklahoma to ensure its compliance with the Escrow Statute. For years, the Tribe wanted to sell cigarettes in Arizona. However, as a federally recognized Native American Tribe, the Tribe also asserted that they were immune from being sued by the State. TEU insisted that if the Seneca-Cayuga Tribe wanted to sell cigarettes in Arizona, the Tribe had to waive sovereign immunity so the State could effectively enforce the laws governing cigarette sales if there was a violation. The Seneca-Cayuga Tribe eventually agreed to waive its sovereign immunity, which would allow the State to institute legal proceedings in the event of non-compliance, and to follow the state’s Escrow Statute.

## **Enforcement of the public health provisions of the MSA**

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

### **Protecting youth from tobacco – Circle K agreement**

In 2011, Arizona and other states reached an agreement with Circle K Stores, Inc. ("Circle K"), to reduce tobacco sales to minors. Circle K is the nation's second largest operator of convenience stores, with approximately 4,000 retail outlets. Under the settlement agreement, Circle K agreed to provide its employees with comprehensive training including on the health reasons for restrictions to youth access to tobacco. The agreement also required Circle K employees to check identification for all individuals who reasonably appear to be under the age of 30, to conduct compliance checks at 500 stores each six months, to eliminate self-service tobacco displays, and limit in-store advertising for tobacco products. Circle K will also change the terms of its franchise contracts to require franchisees to report incidents of tobacco sales to minors and to provide that illegal sales could result in loss of the franchise.

## **VI. MONIES FOR THE STATE OF ARIZONA**

Diligent Enforcement of Tobacco MSA - \$99.1 Million

Penalties/Costs for Antitrust and Consumer Litigation - \$41.4 Million

Recovery for Arizona Consumers in response to complaints - \$1.2 Million

## **VII. COMMUNITY OUTREACH AND EDUCATION DIVISION**

The Community Outreach and Education Division hosted or participated in over 300 community events across the state. The events included presentations and information booths on a variety of topics including: identity theft, top 10 consumer scams, life care planning, civil rights, protecting seniors, and victims' rights. Most recently the Community Outreach and Education Division launched an updated internet safety initiative. The initiative aimed at informing parents, educators and students about potential online threats. The Community Outreach and Education staff interacted with over 2,000 students between the ages of 8 and 12 at over 100 schools across the state.

The division is responsible for answering helpline phone calls. In fiscal year 2011 the division handled 5,000 citizen calls requesting guidance. In FY 2011 the Community Outreach and Education Division edited and printed 16 brochures and informational pamphlets for three divisions. The division distributed some 27,562 pieces of literature to citizens across the state.

The Community Outreach and Education Division, in conjunction with the Office of Victims Services was awarded a \$50,000.00 federal grant from the Maryland Crime Victim Resource Center. The funds will be used to initiate a National Identity Theft Coalition based in Arizona.



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## ATTORNEY GENERAL FY2011 ANNUAL REPORT

### APPENDIX D

#### I. Major Cases:

*CPSA Contract Protest.* Successfully defended an administrative challenge to a \$40,000,000.00 contract award from the Arizona Department of Health Services to Cenpatico Behavioral Health. CPSA, the incumbent contractor, filed a protest requesting that the contract be re-bid or awarded to CPSA.

*Roach v. Brewer.* Intervened for the State in this Petition for Special Action filed in the Arizona Supreme court. Petitioners sought to enjoin the governor and the AHCCCS Director from taking any action to deny AHCCCS benefits or terminate AHCCCS coverage for eligible persons under Proposition 204. Pursuant to the State's and AHCCCS' briefing, urging that the Supreme Court decline jurisdiction, the Supreme Court denied injunctive relief and declined jurisdiction over the Special Action. Petitioners then re-filed the case as *Fogliano v. State* in the superior court. Plaintiffs' requested relief has a budget impact on AHCCCS of over \$200,000,000.00.

*Glendale Casino Cases:* Represented the State in three United States District Court cases concerning the proposed Tohono O'odham Nation casino. In one suit, the State, the Gila River Indian community, and the City of Glendale asked the court to invalidate the Department of Interior's decision that the land for the proposed casino was eligible to be taken into trust. The court ruled in favor of the Tohono O'odham Nation and that decision is on appeal. The Department of Interior's decision and the district court's decision have been stayed pending the appeal. The second suit involves the Tohono O'odham Nation's challenge of the recently passed annexation statute allowing Glendale to annex the land in question. The district court ruled for the Tohono O'odham Nation and that case is also on appeal. The third suit was brought by the State for breach of the 2002 Indian Gaming Compact. The State has been joined by the Gila River Indian Community and the Salt River Pima Maricopa Indian Community. This suit survived the Tohono O'odham Nation's motion to dismiss and is proceeding through discovery.

*SB 1070:* Represented the State and the Governor in numerous actions related to SB 1070. The primary suit was brought by the United States Department of Justice against the State and the Governor seeking to enjoin enforcement of SB 1070. The court enjoined certain sections of SB 1070 and that decision was upheld on appeal. The State

is filing a petition for certiorari in the United States Supreme Court. We filed a counterclaim asserting five causes of action against the United States and seeking relief from the economic hardship endured by the State because of the United States' failure to enforce immigration laws.

*State of Arizona v. United States of America:* Filed declaratory judgment action in federal court to determine the rights and duties of the State and its officers regarding the validity, enforceability, and implementation of the Arizona Medical Marijuana Act, and to determine if that Act provides a safe harbor from federal prosecution. Also defending the State, elected officials and state employees in a number of actions filed in response to the federal suit: *Compassion First, LLC v. State*, *Elements Therapeutic Dispensary v. Humble*, and *Serenity Arizona v. Humble*.

*In re the matter of J.K.:* This case filed in 1991 in the U.S. District Court as a class action by children eligible for, or in need of, behavioral health services funded under Title XIX of the Social Security Act. In March 2001, the parties entered into a Settlement Agreement which was approved by the Court in June 2001. Defendants, Arizona Department of Health Services and Arizona Health Care Cost containment System, filed a Motion to Terminate the Court's Jurisdiction on March 4, 2011. No decision has yet issued.

*Rumery v. State:* The superior court struck down the Legislature's funding mechanism allowing the State Land Department to use state trust land money to support the Department's administration of the trust. We were able to secure a stay of judgment from the Arizona Court of Appeals which allowed the Department to continue to operate and generate income to the trust during fiscal year 2011.

*State v. Arizona Navigable Streams Adjudication Commission:* Represented the State Land Commissioner in a suit against the Arizona Navigable Streams Adjudication Commission's (ANSAC) determination that the Lower Salt river is non-navigable. ANSAC is responsible for determining navigability of Arizona watercourses for title purposes. The State Land Commissioner has a statutory duty to advocate for the public trust, promote public trust interests, and challenge ANSAC's decision as necessary to protect public trust interests. The Court of Appeals ruled in favor of the State, finding ANSAC misapplied the federal test for navigability. The Arizona Supreme Court denied the Petition for Review. A Petition for Certiorari filed with the United States Supreme Court was rejected as untimely.

*State v. Sussex:* Last year, the State prevailed on a motion for summary judgment awarding title and possession to a 1.08 acre parcel of State land in Tempe that is worth approximately \$1,000,000.00. Defendants failed to comply with the judgment. This year, we brought a contempt action. Although the litigation is ongoing, Defendants have removed the numerous cars, boats, trailers, construction materials and debris that have been cluttering the State's land for decades.

*In re Hernel Aitken:* Representation before the Arizona Peace Officers Standards and Training Board to remove Hernel Aitken's peace officer certification. Yuma Police Officer

Hernel Aiken, in violation of agency policy, received a benefit under color of authority from the Best Western Inn Suites in Yuma, when he requested and received a discounted room rate resulting in savings to him of over \$2,030.00. Aitmen never paid the discounted bill of \$2898 incurred during his stay. Further, he lied during an administrative investigation. He also engaged in a pattern of conduct in which he received cash loans or benefits of over \$130,000.00 from six Yuma business people and failed to repay the loans or compensate for the benefits as promised. Aitken's certification was revoked.

*Board of Osteopathic Examiners v. Sweet:* Represented the Board of Osteopathic Examiners in summarily suspending and later revoking Dr. Lynn Sweet's license. Sweet fell below the standard of care in prescribing large amounts of pain medications, and other highly addictive substances, to patients without proper physical examinations and laboratory work. Two patients died of drug overdoses. Four other patients were prescribed large amounts of controlled substances, much not justified by the information contained in Sweet's records.

*Kim v. Arizona State Board of Dental Examiners:* Represented the Board in its challenge of a superior court decision holding that the Board could only order restitution in favor of a patient to the extent the dentist actually received payment from the patient. Here, Kim's employer received a portion of the fees charged by Kim and paid by the patient. The Arizona Court of Appeals ruled that the Board could order the dentist to pay restitution for the full amount of fees paid by the patient, even if the dentist did not retain all of the fees.

*ASARCO v. Arizona Department of Revenue:* Represented the Arizona Department of Revenue (ADOR) in obtaining a dismissal of ASARCO's property tax appeals of ADOR's valuation, for tax years 2008 – 2001, of ASARCO's Mission mine in Pima county and Ray Mine in Gila and Pinal Counties. ASARCO withdrew its appeals in the face of an award of partial summary judgment upholding ADOR's use of the income approach in valuing the Mission Mine, aggressive discovery, and the retention of well-regarded outside experts. The composite tax refund savings to the three counties was \$14,800,000.00.

*Southwest Airlines v. State of Arizona:* Successfully defended the Arizona Department of Revenue's valuation of Southwest's flight property for tax years 2008 – 2010. The judgment resulted in a tax refund savings of \$4,000,000.00, exclusive of interest.

*Arizona Department of Revenue v. South Point:* Successfully represented the Arizona Department of Revenue in its challenge of the State Board of Equalization's decision to grant South Point a reduction in value for an overvaluation occasioned by South Point's not reporting the cost of personal property. South Point sought error correction relief for valuation years in which it had refused to submit annual reports because it wrongly believed that its electric generation plant was exempt from property taxation. ADOR contended that the State Board of Equalization erred in reducing South Point's valuation.

The Tax Court agreed. The refund exposure of Mohave County was \$1,100,000.00, not including interest.

*State v. LSpear, LLC:* Represented the Arizona Department of Transportation in mediating a claim for just compensation of \$1,200,000.00. The matter settled for \$737,500.00 and expert witness costs which would have been incurred if the matter had proceeded to trial.

*State v. VDG Monkey Do:* Represented the Arizona Department of Transportation in a case involving acquisition of a 39,005 square foot replacement well site from a 31.05 acre vacant parcel of land. The replacement well site is located near the southwest corner of 99<sup>th</sup> Avenue and Van Buren Street in Tolleson. The case settled for \$13,046.00 above ADOT's appraisal; by settling, we avoided a potentially substantial damage claim based upon the loss of frontage on a major arterial.

*State v. Sather:* Represented the Arizona Department of Transportation in a direct and inverse condemnation with a damage claim of \$1,000,000.00. The case settled for \$35,000.00.

*Hopkins v. Arizona Board of Regents:* Hopkins alleged employees of the University of Arizona acted unlawfully by reporting her actions on campus to her employer. She alleged the employees interfered with her employment and defamed her. The jury found in favor of the employees.

*Vasquez v. State:* A wrongful death action filed by the survivors of a person who died during a police pursuit was dismissed when the court granted the State's motion for summary judgment. The state argued that the evidence supported its position that the officers acted reasonable at all times during the pursuit.

*Ballonoff v. Office of the Arizona Attorney General:* The court dismissed all claims made by the plaintiff arising from the search and seizure of property pursuant to a warrant issued by a court as part of an investigation of the plaintiff under the civil forfeiture statutes.

*Dillon v. State:* The plaintiff's claim under federal civil rights statutes relating to the death of a relative was dismissed by the federal court. The court initially denied the State's motion, but reviewed the ruling and granted the motion on its own when the State presented its jury instructions. The State used the settling of jury instructions as a vehicle to persuade the court that its motion should have been granted.

*Cameron v. Arizona Board of Regents:* Cameron claimed she had been terminated from her position with Arizona State University because of race discrimination. The case was tried for five days before a federal court jury. At the close of evidence, the trial judge directed a verdict for the defendants.

## **II. Major Accomplishments:**

Assisted and advised the Arizona Department of Education (ADE) in responding to four Office of Civil Rights investigations filed against ADE by the U.S. Department of Education and the U.S. Department of Justice.

Assisted the Arizona Department of Education in negotiating the settlement of four appeals of audits of the average daily membership of public schools. These settlements enabled Arizona to recoup approximately \$250,000.00 in overpaid state aid.

Assisted the State Board of Education by developing and implementing an administrative appeals process for applicants and certificate-holders whose applications for certification and renewal of certification were denied for unprofessional conduct.

Provided advice to the Early Childhood Development and Health Board regional councils and staff regarding the requirements of Prop. 103 "English Only" and PRWORA "Eligibility for Public Programs." Also provided advice regarding grants, contracts, MOUs and tribal agreements, totaling approximately \$137,000,000.00, awarded or renewed by the Board in FY11.

Assisted the School Facilities Board in issuing \$91,000,000.00 of federally qualified school construction bonds for lease-to-own transactions to fund new school construction. Also assisted the Board in refunding \$60,000,000.00 of Certificates of Participation to decrease the debt service.

Conducted 240 Civil Commitment and Forensic hearings before the superior court and the Psychiatric Security Review Board on behalf of the Arizona State Hospital.

Assisted the Arizona Department of Health Services in terminating the contract of a contractor for pharmacy services at the Arizona State Hospital, saving ADHS hundreds of thousands of dollars.

Represented the State Lab in four administrative enforcement actions resulting in the recovery of administrative costs and civil penalties in excess of \$200,000.00.

Defended 71 administrative personnel actions for executive branch agencies and the courts.

Represented Children's Rehabilitative Services in two contract claim cases involving large excess-insurance claims (in excess of \$1,000,000.00) by two hospital chains resulting in settlements in which Children's Rehabilitative Services obtained full releases and paid nothing.

Conducted six evidentiary hearings and filed numerous motions and responses in superior court for the Arizona Community Protection and Treatment Center (ACPTC) regarding the continuing commitment of sexually violent persons. Conducted four

superior court evidentiary hearings regarding revocations of conditional release for sexually violent persons. Conducted an evidentiary hearing and three oral arguments in superior court regarding the conditions of confinement for sexually violent persons committed to the ACPTC.

Supported the Arizona State Land Department in its mission to general revenue for public purposes, including support of the common schools. Through a continuing decline in the real estate market, the Land Department generated \$60,000,000.00 in revenue from sales and long-term leases. Also assisted the Land Department in restructuring transactions within the parameters of applicable legislation governing extensions and modifications.

Assisted the Arizona Department of Mines and Mineral Resources (DMMR) and the Arizona Geological Survey (AGS) to transfer assets from DMMR to AGS so that public access to valuable mining information was preserved. Also assisted in winding down DMMR.

Advised and assisted state departments, agencies, boards and commissions in addressing issues raised by the Arizona Medical Marijuana Act.

In *Snowden v. Arizona Board of Regents*, the plaintiff sued for injuries sustained when the glass shower door in her dorm room shattered. The contractor responsible for building the dorm initially rejected the tender and demand for a defense. After extensive discussions, the contractor agreed to defend and indemnify ABOR.

**III. Civil Division – Dollars Generated or Saved: FY11**

**A. Restitution:**

Accountancy Board.....	\$2,539.79
Dental Board.....	\$16,785.60
TOTAL RESTITUTION.....	\$19,325.39

**B. Civil Penalties/Fines:**

Accountancy Board.....	\$7,200.00
Building, Fire and Life Safety Department.....	\$17,500.00
Cosmetology Board.....	\$23,875.00
Dental Board.....	\$500.00
Liquor Department.....	\$85,750.00

Nursing Care Administrators Board.....	\$800.00
Pest Management Office.....	\$1,304.00
Pharmacy Board.....	\$35,250.00
Registrar of Contractors.....	\$7,000.00
Technical Registration Board.....	\$20,000.00
Veterinary Medical Examiners Board.....	\$5,000.00
Department of Weights and Measures.....	\$149,950.00
MVD, DPS, AGO.....	\$10,000.00
Department of Health Services.....	\$370,690.00
TOTAL CIVIL PENALTIES/FINES.....	\$734,819.00

**C. Reimbursement of Costs Incurred in the Course of Investigations and Formal Hearings:**

Accountancy Board.....	\$39,752.00
Cosmetology Board.....	\$37,010.00
Medical Board.....	\$6,025.31
Technical Registration Board.....	\$1,793.00
Arizona State Land Department.....	\$20,000.00
Department of Health Services.....	\$78,000.00
TOTAL REIMBURSEMENT.....	\$182,580.69

**D. Other Savings to State Agencies:**

Nursing Board.....	\$8,639.50
Arizona State Land Department.....	\$9,225.00
(Trespass damages and water assessment fees)	

Registrar of Contractors.....\$586,370.41  
(Savings to ROC were calculated by subtracting the amount  
Actually paid out of the Contractors' Recovery Fund from the  
amount initially requested by the claimant, subject to the  
\$30,000.00 statutory limit.)

TOTAL OTHER SAVINGS.....\$604,234.91

**E. Condemnation:**

Arizona Department of Transportation.....\$20,979,573.00  
(Measured by the amount of ultimate settlements or verdicts in  
Comparison to the amounts demanded as just compensation or  
Damages.)

**F. Risk Management Representation:**

For FY11, the average hourly rate paid by the state for  
AGO counsel in tort lawsuits was \$104.00. The average  
hourly rate for outside counsel in tort lawsuits was  
\$173.00. For employment lawsuits, the average hourly  
rate paid by the State for AGO counsel was \$88.00. The  
average hourly rate paid by the State for AGO counsel in  
workers compensation matters was \$103.00. No  
employment or workers compensation matters were sent  
to outside counsel in FY11.

In FY11 our Liability Management Section tried four  
cases to jury verdict. The amounts demanded by  
plaintiffs to settle the cases before trial totaled \$3,450,945.00;  
the amounts awarded by the juries in those cases totaled  
\$364,388.00 or a little more than 10% of the total pre-trial  
demands.

In FY11 our Employment Law Section defended and  
closed fifteen cases in which the plaintiffs' demands  
totaled \$5,775,000.00. The amount paid by the State in  
those cases totaled \$155,000.00.



**TOM HORNE**  
ATTORNEY GENERAL

**OFFICE OF THE ARIZONA ATTORNEY GENERAL**  
**PUBLIC ADVOCACY DIVISION**

**THOMAS CHENAL**  
CHIEF COUNSEL

## **ATTORNEY GENERAL FY2011 ANNUAL REPORT**

### **Environmental Enforcement Section**

#### **Appendix E**

##### **Mission**

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

##### **Overview**

The Environmental Enforcement Section ("EES") provides advice, enforcement and representation activities related to state and federal environmental and natural resources law. The Section is divided into two components: the Tanks and Air Unit and the Superfund Programs Unit. The Section advises, represents and litigates on behalf of the Arizona Department of Environmental Quality ("ADEQ") in State and Federal environmental matters and enforces the environmental statutes.

##### **ACCOMPLISHMENTS**

1. **Western States Petroleum v. ADEQ**: This is a judicial review of an administrative decision, which EES successfully defended, through briefing and oral argument to Superior Court, the Administrative Law Judge's ("ALJ") recommended decision and ADEQ's final decision. Western States Petroleum ("WSP") appealed ADEQ's determination that WSP was ineligible for an additional \$500,000.00 from the State Assurance Fund ("SAF") because WSP failed to utilize to the maximum extent possible insurance coverage, pursuant to A.R.S. §§ 49-1054(A) and 1052(F)(5). The final decision was based on the ALJ's findings of fact and conclusions of law, which included findings that WSP's witnesses and evidence were neither credible nor sufficient to meet the burden of proof; that WSP incorrectly interpreted the applicable definition of owner or operator; and that WSP presented a case and arguments that were outside the scope of the appeal. The superior court determined that WSP failed to meet its burden of proof and upheld ADEQ's decision.

2. **State v. Star Valley Veterinary Clinic, PC:** Negotiated settlement between ADEQ and Star Valley Veterinary Clinic, PC (“SVVC”) for violations of the State’s biohazardous medical rules. SVVC illegally stored and disposed of syringes and related biohazardous medical waste by placing the waste in unmarked improper containers and by discarding of the waste with trash in dumpster for regular trash pickup. SVVC was found to be unable to pay a penalty based on financial hardship. SVVC agreed to settle the violations by paying a \$5,000.00 civil penalty and by providing \$60,000.00 in veterinary services to the Humane Society of Central Arizona.

3. **Clin-Path Diagnostics, LLC:** Clin-Path Diagnostics, LLC (“Clin-Path”) agreed to pay \$70,000.00 to settle its notice of violation of Arizona’s hazardous waste statutes. Clin-Path, which prepares pathology slides for analysis, was a large quantity generator, but was not aware of the hazardous waste laws. In the settlement, Clin-Path paid \$70,000.00 in a civil penalty.

4. **All Pro Industrial, LLC:** All Pro Industrial, LLC, a metal finishing company, agreed to pay \$40,000 to resolve hazardous waste allegations stemming from a 2008 notice of violation. They have corrected the violations, performed a supplemental environmental project worth \$16,000 and will now pay \$40,000 over three years.

5. **Fisher Sand & Gravel Co.:** This matter involved numerous air quality violations from the company’s sand and gravel operations. A settlement was negotiated including \$125,000.00 in civil penalty and the implementation of an environmental management system with an estimated cost of nearly \$900,000.00.

6. **Nord Resources Corp:** This matter involved an aquifer protection permit (“APP”) and air quality violations at the Johnson Camp Mine in Cochise County. A settlement was reached where Nord will pay \$65,000.00 in civil penalty in four quarterly payments and will construct a new drinking water system at the mine, at an estimated cost of \$900,000.00.

7. **Cross Spear Marble, Inc.:** This matter involved air quality violations at the mine in Cochise County. A settlement was reached including an \$80,000.00 civil penalty.

8. **Conn-Selmer, Inc.:** This matter involved hazardous waste statutes violations. A settlement was reached including a \$150,000.00 civil penalty payable over three years.

9. **Metco Metal Finishings, Inc:** ADEQ inspected Metco Metal Finishings, Inc. (“Metco”) metal plating facility and discovered several violations of the Arizona hazardous waste laws. In a settlement, Metco agreed to pay a civil penalty of \$75,000.00 over three years and perform a supplemental environmental project valued at \$50,000.00.

10. **Palm Harbor Homes:** This matter involves a settlement agreement in two (consolidated) appeals of four related applications for payments from the SAF for underground storage tank (“UST”) corrective action costs. Palm Harbor Homes (“Palm Harbor”) filed claims for costs that were associated with Superfund site remediation actions based on the theory that Palm Harbor saved costs by coordinating with the Environmental Protection Agency (“EPA”) sampling and laboratory analysis. ADEQ denied applications for costs that could not be separated from costs associated with the Superfund site because ADEQ did not have statutory authority to pay non-UST action costs. Palm Harbor claimed costs during appeal for a total of \$240,000.00, but settled for \$63,902.88.

11. **Sav-On Plating of Arizona, Inc.:** ADEQ inspected Sav-On Plating of Arizona, Inc. (“Sav-On”) metal plating facility and uncovered violations of the Arizona hazardous waste laws. ADEQ issued a notice of violation to Sav-On. In a negotiated settlement, Sav-On agreed to pay a penalty of \$60,000.00 over three years.

12. **BAE Systems Aerospace and Defense Group, Inc.:** This matter involves violations of the hazardous waste statutes. In a settlement, BAE Systems Aerospace and Defense Group, Inc. agreed to pay \$40,000.00 in civil penalty.

#### **EES IMPACT INFORMATION FOR FY11**

- EES collected \$709,000.00 in penalties for the State.
- EES saved the State Assurance Fund approximately \$812,500.00.



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ATTORNEY GENERAL

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**CHILD AND FAMILY PROTECTION DIVISION**

**NICOLE DAVIS**  
DIVISION CHIEF COUNSEL

## **ATTORNEY GENERAL FY2011 ANNUAL REPORT**

### **APPENDIX F**

#### ***MISSION***

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

#### ***DIVISION SUMMARY***

The Child and Family Protection Division (CFPD) provides comprehensive legal representation to ADES with more than 320 employees in locations statewide. CFPD is divided into three sections: Protective Services Section (PSS); Child Support Enforcement Section (CSE); and Civil and Criminal Litigation and Advice Section (CLA). The Division's Appellate Practice Group represents ADES in the Arizona Court of Appeals, Arizona Supreme Court, and the Federal District Courts. The Appellate Practice Group prevails in 95% of all appeals resolved.

#### ***PROTECTIVE SERVICES SECTION***

The Protective Services Section of the Attorney General's Office provides comprehensive legal representation to the Child Protective Services (CPS) Division of ADES. The Protective Service Section shares the CPS goal of protecting children, preserving families, and achieving permanency for Arizona's children in care.

The attorneys and staff of PSS provide legal representation to CPS throughout Arizona's 15 counties with offices in Phoenix, Mesa, Prescott, Flagstaff, Kingman, Yuma, Tucson, and Sierra Vista.

**Trial Practice:** PSS attorneys engage in an intense, high volume, fast paced, litigation focused practice in the Juvenile Division of the Arizona's Superior Court. Trial lawyers in PSS handle thousands of legal actions each year, generally referred to as "dependency cases". These actions serve to protect abused and neglected children removed from their parents and placed in the legal custody of CPS by the courts.

Protective and remedial social services are provided to the family to remedy the circumstances that brought the children into care in order to achieve successful reunification. If attempts to reunite families prove unsuccessful, PSS attorneys represent CPS in actions to achieve permanent placement of children through severance of parental rights, guardianship, and adoption proceedings.

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

**Appellate Matters:** For the Protective Services Section, the Child and Family Protection Division's Appellate Practice Group regularly appears before the Arizona Court of Appeals to defend trial court judgments, and to file and respond to appeals and special actions. In FY2011, 146 briefs and 3 special actions were filed on behalf of PSS and the appellate lawyers prevailed in 97% of all PSS appeals resolved. Additionally, appellate attorneys filed 308 substantive motions and reviewed an additional 204 motions written by PSS attorneys.

Moreover, the Appellate Practice Group, with guidance on the applicable legal principles from the Civil and Criminal Litigation and Advice Section, drafted the States' amicus brief in *Camreta v. Greene*. The Ninth Circuit held that Camreta, an Oregon CPS worker, and Alford, a sheriff's deputy, had violated S.G.'s rights when they interviewed her for two hours at school without a warrant, a court order, or parental permission. The Ninth Circuit determined that both Camreta and Alford were entitled to qualified immunity for those actions because the law as to that point was unclear. The Ninth Circuit's decision established that it was no longer permissible to "seize" children for interviews without a warrant or court order (supported by probable cause), parental consent, or exigent circumstances. Camreta and Alford appealed to the U.S. Supreme Court. The U.S. Supreme Court vacated the Ninth Circuit's ruling on a procedural technicality because S.G. was almost 18 and had left the state of Oregon. The Court found that S.G. no longer had a stake in the outcome. The Court did not reach the merits of the case. As a result of these rulings, joint custodial interviews of children at school by CPS and law enforcement no longer require a court order/warrant, parental consent, or exigent circumstances, but the exact scope of the interview is still unresolved.

**Accomplishments:** In FY2011, PSS attorneys attended 54,281 court appearances, an increase of 1,055 court appearances over FY2010 (53,226). PSS attorneys represented ADES in trial a total of

3,182 days in FY2011, an increase of 953 days from FY2010 (2,229). PSS support staff prepared just under a 4% increase of legal documents in FY2011 (53,241) compared to FY2010 (51,294).

The Protective Services Section Best Practices Committee continued its work to ensure consistent, statewide, high quality legal work and compliance with legislative and local rule changes. Additionally, the Section has continued with Case Permanency Review and Management Conferences (CPRMC) which require management to review all cases to ensure timely, appropriate, evidence-based permanency for children in care.

**In FY2011 PSS attorneys and staff statewide:**

- protected more than 12,176 children from abuse and neglect
- filed 3,477 new dependency petitions
- filed 1,586 severance motions and petitions<sup>1</sup>
- filed 336 guardianship motions<sup>2</sup>
- filed 241 adoption petitions
- helped reunite 1,722 children with their parents
- placed 378 children with permanent guardians<sup>3</sup>
- assisted in the adoption of 1,876 children by relatives or foster parents<sup>4</sup>

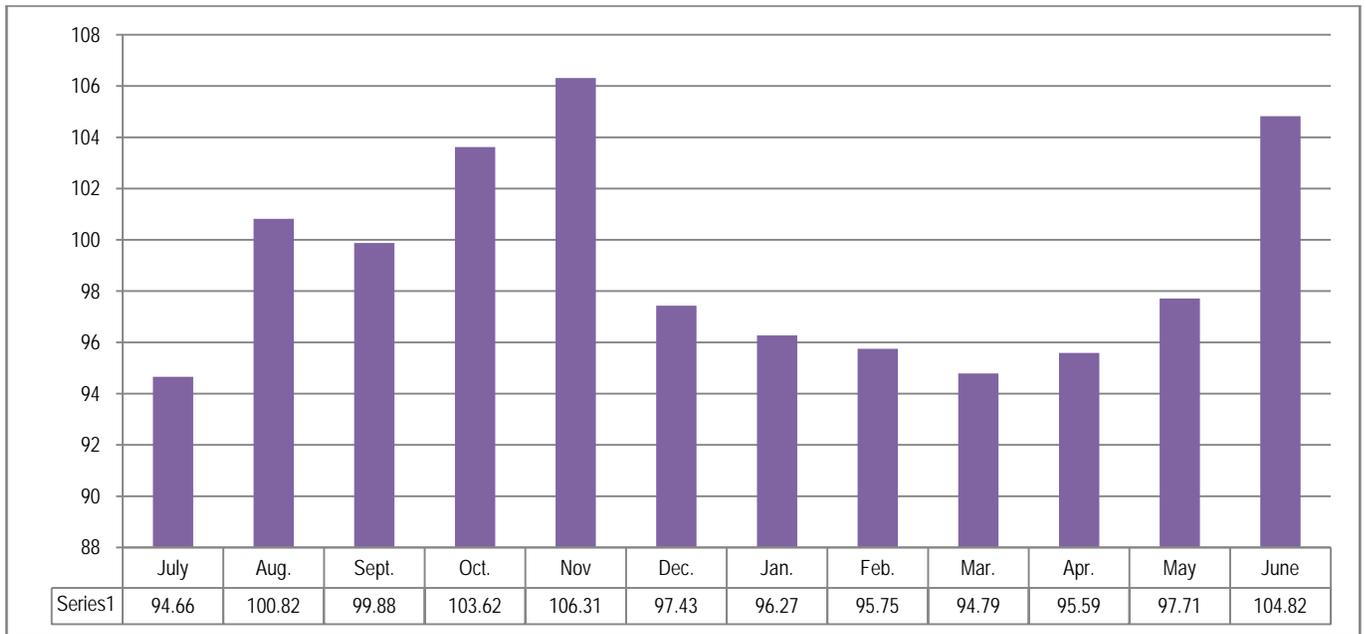
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<sup>1</sup> *The CPRMC process has improved PSS practice. Cases are identified for severance earlier than under the previous system of centralized staffing. In addition, PSS improved its application of the straight to severance procedure for cases in which reunification is not possible (severe abuse cases; child death and siblings are now in care; new baby to parents whose rights were recently terminated).*

<sup>2</sup> *Termination of parental rights is the primary permanent goal if reunification cannot be achieved. Children should be placed for permanent guardianship if there is a reason not to pursue adoption (e.g., the child has a strong bond with one or both parents; a parent may be able to rehabilitate and seek a revocation of the permanent guardianship after a period of years; or the child is age 12 or older and will not consent to adoption).*

<sup>3</sup> *Because termination of parental rights and adoption is the preferred permanent plan for children, there has been a decrease in the number of children in permanent guardianship. This corresponds to the increase of children adopted (below).*

<sup>4</sup> *This increase is attributable to an increase in the skills and knowledge of PSS lawyers, resulting in more adoptions of children.*



The ABA has recommended that the dependency caseload for an agency attorney should be 60-80. As noted in the chart, PSS attorney caseloads in FY2011 were significantly higher than this standard.

### **CHILD SUPPORT ENFORCEMENT SECTION**

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

Because more than 45% of Arizona's children are born to unwed parents, establishing paternity is often the first step in the child support process. After paternity has been established, CSE may take legal action to pursue child support. DCSE currently has more than 194,579 open child support cases statewide. The litigation caseload for the CSE Section is between 7,500 and 8,500 ongoing cases.

In FY2011, CSE helped Arizona children receive the support to which they were entitled by:

- Judicial establishment of paternity for 2,101 children<sup>5</sup>
- Increased enforcement activity in judicial and administrative establishment of new child support orders for 4,820 families.

<sup>5</sup> *The Arizona IV-D Child Support Program is number one in the nation with respect to its efforts in establishment of paternity.*

- Obtained child support judgments of over \$35.4 million.
- Resolving 4,883 actions for modification of support.
- Representing the State in over 23,939 court appearances.
- Assisting DCSE to collect over \$359 million in support.
- In bankruptcy cases, collecting \$417,392.00 in support.
- In non-Family Court litigation relating to liens and foreclosures, collecting \$606,241.00.

**Appellate Matters:** In FY2011 the CFPD Appellate Practice Group represented ADES in 17 active appeals, seven new appeals and filed 11 answer briefs in cases typically appealed by pro per litigants.

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

The Civil and Criminal Litigation and Advice Section of the Child and Family Protection Division provides advice and representation for all ADES programs except Child Protective Services and Child Support Enforcement. Programs include: Adoption Subsidies, Developmental Disabilities, Unemployment Insurance and Tax, Vocational Rehabilitation Services, Food Stamps and Cash Assistance, Certification of Child Care and Foster Care Providers, AHCCCS Long Term Care Services, Adult Protective Services, Behavioral Health Services for dependent children, and collection of public benefit-related debts owed to ADES. CLA also advises and represents ADES regarding its business operations, including the hiring and discipline of employees, compliance with laws governing workplace conduct and safety, contracts for service providers, and facilities management.

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

### **In FY2011, the CLA Civil Practice:**

- Opened, litigated and/or reviewed 858 administrative litigation and civil cases.
- Opened and reviewed 209 contracts, leases and/or amendments.
- Obtained 225 civil judgments in civil collections cases totaling \$556,801.26.
- Secured an additional \$20,831.70 in civil collections without the need for reducing multiple matters to a judgment.
- Collected \$253,000.79 through wage and bank garnishments.
- Filed 283 civil collections cases.
- Opened over 57 “matter” files for tracking significant legal advice provided to ADES.
- Responded to over 1,020 subpoenas and requests for public records.
- Reviewed over 108 Intergovernmental Agreements and Amendments.

<b>Administrative Litigation and Civil Cases By Program</b>	<b>Total</b>
Adoption Subsidy	6
Adult Protective Services and Aging & Adult Administration	89
Business Enterprise Program (BEP)	1
Child Care Administration	9
Child Care Recipient Fraud	4
Comprehensive Medical and Dental Program	9
Division of Benefits/Medical Eligibility (DBME)	7
Division of Business and Finance	4
Division of Children Youth & Families	3
Division of Developmental Disabilities	211
Equal Opportunity Commission/Office of Equal Opportunity	26
Foster Care and Foster Care Licensing	36
Internal Affairs I/A	45
Mental Health (CYF/CPS Cases)	46
Personnel (All programs)	126
Protective Services Review Team	154
Unemployment Insurance Benefits/Unemployment Insurance Contributions	58
Vocational Rehab & Blind Services	24
<b>GRAND TOTAL</b>	<b>858</b>

<b>Civil Collections by Program</b>					
<b>Program</b>	<b>Filed</b>	<b>Collections Rec'd Judgment Not Filed</b>	<b>Collections Without Reducing Matter to Judgment</b>	<b>Judgments Entered</b>	<b>Total Judgments</b>
Cash Assistance	2			4	\$6,179.80
Any Combination	2			4	\$8,316.98
Childcare Assistance	1			1	\$2,857.25
Division of Developmental Disabilities	4			3	\$23,189.24
Employee Related	6	1	\$508.60	8	\$15,136.57
Supplemental Nutrition Assistance program (formerly Food Stamps)	0			0	\$0.00
Supplemental Nutrition Assistance program (formerly Food Stamps) Plus Another	1			4	\$8,517.40
Foster Care	1			0	\$0.00
Parental Assessment	2			2	\$5,800.00
Unemployment Insurance Benefits	264	13	\$20,323.10	199	\$486,804.02 <sup>6</sup>
<b>Total</b>	<b>283</b>	<b>14</b>	<b>\$20,831.70</b>	<b>225</b>	<b>\$556,801.26</b>
<b>Total Civil Collections</b>					<b>\$577,632.96</b>

<b>Garnishment Collection Summary</b>	
3rd Quarter 2010	\$59,892.44
4th Quarter 2010	\$60,479.33
1st Quarter 2011	\$68,614.83
2nd Quarter 2011	\$64,014.19
<b>Grand Total</b>	<b>\$253,000.79</b>

<sup>6</sup> While civil collection matters decreased for several programs from FY2010, this was offset by the explosion CLA experienced in FY2011 related to collection matters associated with the wrongful receipt of unemployment insurance benefits. This increase is largely the result of prevailing economic difficulties and a corresponding increase in enforcement activities.

**In FY2011, the CLA Criminal Team:**

- Filed 147 criminal cases<sup>7</sup>.
- Obtained 169 criminal sentences.
- Obtained restitution orders totaling \$521,306.97.
- Collected \$320,833.73 in restitution prior to sentencing.
- Obtained orders for fines totaling \$12,784.00.
- Obtained orders for 6,013 hours of community service.

<b>Criminal Cases</b>						
<b>Program</b>	<b>Cases Filed</b>	<b>Cases Sentenced</b>	<b>Restitution Ordered</b>	<b>Restitution Paid Prior to Sentencing</b>	<b>Fines Collected</b>	<b>Community Service</b>
Cash Assistance and Supplemental Nutrition Assistance program (formerly Food Stamps)	8	4	12,575.00			100
			15,066.00			360
Child Care Recipient	0	3	2,371.00	26,498.62	400.00	30
Child Support Escape	0	1	0	0	0	0
Employee ADES Division of Children, Youth & Families (DCYF)	0	1	17,736.29	0	0	0
Supplemental Nutrition Assistance program (formerly Food Stamps)	1	3	12,521.00	3,128.00	200.00	120
UIB	138	157	461,037.68	291,207.11	12,184.00	5,403
<b>Grand Totals</b>	<b>147</b>	<b>169</b>	<b>\$521,306.97</b>	<b>\$320,833.73</b>	<b>\$12,784.00</b>	<b>6,013</b>

**IN FY 2011:** In *Greene v. Camreta*, see *supra*, *Protective Services Section*.

- In connection with a series of juvenile court dependency matters, CLA attorneys in conjunction with the CFPD Appellate Practice Group have been instrumental in the continuing defense of CPS against allegations that it purportedly failed to comply with certain statutory requirements. A portion of the

<sup>7</sup> CLA experienced an overall decline in criminal cases filed in FY2011, which is largely attributable to the increased time and complexity associated with charging matters involving the unlawful receipt of unemployment insurance benefits given the expansion of the maximum time period to receive such benefits to 99 weeks.

defense required expedited intervention by the Arizona Court of Appeals via Special Action Jurisdiction. The Court of Appeals vacated the trial court's order for further determination of the child's best interests.

- CLA attorneys actively managed and litigated a large volume of cases, including one in which the allegedly abusive and/or neglectful parents challenged a determination placing them on the ADES Child Protective Services Central Registry. Such challenges have resulted in multiple appeals before Arizona's Superior Courts and the Arizona Court of Appeals.
- Over the course of the last several years, CLA has undertaken efforts to stop the operation of a child welfare agency purportedly operated by a reformed gang member turned minister. Efforts included pursuing multiple litigation matters in the Superior and Appellate Courts which ultimately resulted in injunctive relief and an award of substantial attorneys' fees for ADES. In FY2011 the alleged child welfare agency returned under a new name and CLA secured a contempt order against the operator for violating the prior injunction.

**Appellate Matters:**

For CLA, the CFPD Appellate Practice Group focuses on appeals from 1) unemployment insurance benefit overpayments, 2) denials of benefits coverage, and 3) timeliness of appeals.

In FY2011 the Group addressed 21 Notices of Appeal, represented ADES in 14 appellate matters, and drafted and/or filed 13 substantive motions. Unlike other appeals, the Court exercises its discretion on matters accepted for review seeking fundamental errors resulting in significant research, internal review and subsequent client advice.



TOM HORNE  
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL  
CRIMINAL DIVISION

JAMES KEPPEL  
DIVISION CHIEF COUNSEL

ATTORNEY GENERAL FY2011 ANNUAL REPORT

APPENDIX G

I. AGO Criminal Division Year in Review.

- Overview of Accomplishments:

In Fiscal Year 2011, the **Criminal Appeals/Capital Litigation Section** worked to uphold the convictions and sentences of criminal defendants in Arizona. The Section filed 890 briefs, habeas answers, petitions for review, and responses to petitions for review, in addition to other substantive pleadings. Members of the Section have also been involved in providing education and training on a variety of criminal law and procedure issues to prosecutors throughout the state. The Section also successfully litigated in state and federal courts whether Arizona's lethal injection protocol is constitutional. There are several Arizona death-row inmates whose convictions and sentences are now final and who are awaiting final resolution of that issue.

The **Border Crimes Enforcement Section** charged 372 criminal defendants with felony offenses including fraudulent schemes and artifices, illegal enterprise, participating in criminal syndicates, money laundering, violent crimes, and drug cases, many of which stemmed from wiretaps. The Section was involved in eight wiretap investigations which resulted in three indictments charging 67 defendants. The cases of fraudulent schemes involved losses to victims in the millions of dollars. The Section assisted approximately 5,500 victims and obtained restitution of approximately \$850,000.00.

The **Criminal Prosecutions Section's Fraud Unit** charged 552 criminal defendants with felony offenses including fraudulent schemes and artifices, illegal enterprise, participating in criminal syndicates, money laundering and numerous violent crimes. The cases of fraudulent schemes involved losses to victims in the millions of dollars. The Unit assisted over 79,000 victims and obtained restitution in excess of \$21,501,802.00. The Fraud Unit handled 28 foreign prosecutions, many of which are extraditions or are prosecutions of Mexican citizens being tried in Mexico for offenses committed in Arizona. This Unit also obtained federal funding to establish a mortgage fraud prosecution team and conduct mortgage fraud cases in Arizona.

The **Criminal Prosecutions Section's Drug Unit** charged 395 criminal defendants. The Drug Unit was involved in 10 wiretap investigations which resulted in nine indictments charging 47 defendants. The Unit obtained restitution of approximately \$52,000.00 and the sum of \$160,000.00 in fines were ordered to be paid by defendants.

The **Criminal Prosecutions Section's Medicaid Fraud Control Unit** received 176 allegations/complaints regarding fraud, misuse of funds and patient abuse in the AHCCCS program. Of this number, 140 new cases were opened for full investigation, 121 fraud cases and 19 patient/financial exploitation cases. Presently there are 55 cases that have accepted plea agreements. Throughout the year 118 cases were closed of which 82 were the result of disposition (conviction or civil settlement) and 36 were due to insufficient evidence, jurisdiction, or the matter was referred for prosecution elsewhere. In addition, MFCU participated in 154 outreach presentations to assist in the detection, investigation and prosecution of crimes committed in the Medicaid program.

The Medicaid Fraud Control Unit recovered \$3,260,710.00 in restitution for victims, including Arizona Healthcare Cost Containment System (AHCCCS).

The Criminal Prosecution's Section is also responsible for handling probation violation cases throughout the year. This fiscal year the Section prosecuted 89 defendants who had violated their terms of probation.

The **Financial Remedies Section** enforces Arizona's civil racketeering remedies to combat the effects of organized criminal conduct on legitimate commerce. FRS focuses primarily on money laundering in drug and fraud cases. FRS supports statewide efforts to deprive racketeers of the profits that keep them operating. During this fiscal year FRS seized approximately \$8,212,861.00 as racketeering proceeds. Attorneys in FRS also advise and provide training to law enforcement statewide in the areas of forfeiture, money laundering and racketeering.

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

The **Office of Victim Services** continues to provide services to a number of victims of fraud and identity theft. Advocates provided services to more than 7,631 new victims. Our Victims' Rights Ombudsman received and investigated 283 complaints of violations of rights and audited 14 agencies. We supported 60 criminal justice agencies with grants from the Victims' Rights Program totaling

\$2,689,000.00 and provided 55 trainings in victim's rights programs to more than 1466 professionals statewide.

The Office of Victim Services continues to participate and serve as a leader state-wide on victims issues. Included in such activities is the participation of staff in the National Victims' Rights Week celebration. For the 2011 event, the Attorney General's Office collaborated with the Department of Corrections, Maricopa County Attorney's Office and the Office of the Arizona Governor to recognize individuals in Arizona who made significant contributions to victims' rights. The Attorney General personally recognized 7 outstanding professionals and agencies in the criminal justice field in front of approximately 315 attendees.

### **Division Highlights.**

- The Criminal Division consists of the following sections:

#### **Criminal Appeals/Capital Litigation Section**

Attorneys:	34
Support Staff:	15

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

The Section provides unique benefits to the State. By representing the State in all non-capital felony appeals, the Section maintains consistent and uniform positions regarding issues of criminal law, which allows for the orderly and consistent development of criminal law in the state and federal courts. In addition, because the attorneys in the Section are appellate specialists, they provide consistent, efficient, and high-quality representation that individual counties are unable to provide. This increases the likelihood that dangerous criminals will have their convictions and sentences affirmed on appeal, protecting the community and saving resources that would otherwise be expended on expensive retrials and re-sentencings.

The Capital Litigation Section handles all appellate and post-conviction proceedings involving the 133 death-row inmates in Arizona. Those proceedings include the direct appeal to the Arizona Supreme Court and the United States Supreme Court following conviction and sentencing, state post-conviction relief proceedings in the trial court and the Arizona Supreme Court, and federal

habeas proceedings in federal district court, the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court. The Section also assists trial lawyers with research and advice regarding death penalty issues, and has prepared extensive briefing in a number of pending trial matters. The Section conducts a death penalty seminar for prosecutors every year in connection with the Arizona Prosecuting Attorneys' Advisory Council.

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

### **Major Cases – Criminal Appeals/Capital Litigation Section**

**Bible v. Ryan:** Bible was sentenced to death for the 1989 kidnapping, molestation and murder of 9-year-old Jennifer Wilson in Flagstaff, Arizona. After more than two decades of litigation in state and federal court, the Arizona Supreme Court issued a warrant of execution. Bible requested post-conviction DNA testing of hairs, claiming the results would exonerate him. The state and federal courts rejected his claims and Bible was executed on June 30, 2011.

**Dickens v. Brewer:** Seven inmates under sentences of death challenged Arizona's lethal injection protocol, claiming that the protocol violated their Eighth Amendment rights. After briefing and argument, the Ninth Circuit found that Arizona's lethal injection protocol does not violate the Eighth Amendment prohibition against cruel and unusual punishment.

**State v. Gamez:** The court of appeals issued an opinion on whether the State has to prove, as an element of sexual conduct with a minor under 15 years of age, whether the defendant knew that the victim was under 15. The court of appeals affirmed the trial court's instruction, which merely required the State to prove that the victim was under 15. This opinion stems from the 30+ year old defendant meeting the 13-year-old victim on the Internet. The defendant sent his female cousin to pick up the victim at a nearby church for transportation to his residence in a different town several hours away (all in New Mexico). The defendant brought the victim to Arizona, where they lied about her age. The defendant impregnated her while she was still 13.

**State v. Gomez:** The Arizona Supreme Court held that the Confrontation Clause is not implicated by testimony from the State's DNA expert regarding DNA profiles generated by laboratory technicians who did not testify at trial. The case is significant because a ruling to the contrary would have required the State to

produce numerous additional witnesses for trial even though their testimony would have added little or nothing to the expert's testimony.

**State v. Hummons:** Following an illegal detention, police searched the suspect based on the discovery of a misdemeanor arrest warrant. The Arizona Supreme Court rejected the idea that the finding of an arrest warrant will necessarily purge the taint of an unlawful detention. However, the opinion went on to place primary importance on the flagrancy of the officer's conduct. In this particular case, because the officer's conduct in detaining the suspect, even if illegal, was not flagrant or for an improper purpose, the evidence found on the suspect's person was not barred by the exclusionary rule. There has been little consensus in the case law as to what purges the taint of illegality, so this decision helps clarify the issue in Arizona. *Hummons* also permits courts greater flexibility in applying the exclusionary rule.

**State v. Martinez:** This case will help in prosecutions of clandestine meth labs—it holds that consecutive sentences are legal for convictions of manufacturing dangerous drugs and possession of dangerous drugs for sale. This was an issue of first impression, and the availability of consecutive sentences enhances the general deterrent effect on this type of offender.

**State v. Merolle:** The court of appeals held that a trial court does not have "inherent authority" to consider an untimely challenge to grand jury proceedings. The notion of "inherent authority" is a troubling one and raises separation of powers issues. This case provides ammunition against the concept of inherent authority for future cases.

**State v. Styers:** Styers murdered 4-year-old Christopher Milke and was sentenced to death. The Ninth Circuit held that the Arizona Supreme Court erred in its independent review by not considering Styers's PTSD as a mitigating factor. The State asked the Arizona Supreme Court to conduct a new independent review to correct the perceived error. The state court found that the Ninth Circuit incorrectly read its prior opinion, but nevertheless considered Styers's PTSD and found that it was not sufficiently substantial to warrant leniency. The court upheld Styers's death sentence

**Towery v. Schriro:** The Ninth Circuit affirmed the murder conviction and death sentence of Robert Towery in an amended opinion filed December 21, 2010. See *Towery v. Schriro*, No. 08–99022 (9<sup>th</sup> Cir. 2010). On September 4, 1991, Towery and Randy Barker went to the house of Mark Jones to rob him. Towery attempted to kill Jones by injecting him with battery acid. When that did not work, he strangled him with a zip tie. They then took multiple items of Jones' property, including one of his cars. The Ninth Circuit opinion unanimously rejected his claims of prosecutorial misconduct, judicial bias, and ineffective assistance of trial counsel in challenging the evidence regarding use of a syringe to inject battery acid into the victim. No judge of the Ninth Circuit voted to grant Towery's petition for rehearing. The case is currently pending a petition for certiorari to the United States Supreme Court.

## **Criminal Prosecutions Section**

Attorneys: 22  
Support Staff: 18

The Criminal Prosecutions Section consists of four units, the Fraud Unit, the Drug Unit, and the Medicaid Fraud Control Unit.

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

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

The Medicaid Fraud Control Unit is a federally funded unit charged with investigating and prosecuting: Medicaid (AHCCCS) fraud; fraud in the administration of the Medicaid program; and abuse, neglect or financial exploitation occurring in Medicaid facilities or committed by Medicaid providers or their employees. Staff members continue to do presentations in the community on these issues.

The Tucson Criminal Trials Unit prosecutes crimes occurring in the Southern Arizona area including drug trafficking, money laundering, civil forfeiture, human smuggling, and fraud. The unit also works with multi-jurisdictional groups in southern Arizona to prosecute abuse and financial exploitation of the elderly and vulnerable adults.

### **Major Cases – Criminal Prosecutions Section**

#### **Fraud Unit**

**State v. John William Rodriguez:** John William Rodriguez was convicted on July 12, 2010 on charges of fraudulent schemes and artifices, forgery, fraudulent schemes and practices & presentment of a false instrument for filing. The defendant wore the uniform of a Marine Corps Gunnery Sergeant, displaying numerous commendations including the Navy Cross and the Silver Star, and posed as a Marine at public functions and signed documents claiming that he was an active duty Marine, when military records showed that the defendant never served in the military. He claimed military status on an employment application with a company that had a military preference for hiring. He falsely

listed on employment and state applications that he was an active duty Marine. He also sent a letter to the court with the endorsement of a Lt. Col. Larry Wright, who did not exist. He was sentenced on October 4, 2010 to 7.5 years in prison, followed by a 4-year probationary term.

**State v. Edward L. Carpenter:** On August 25, 2010, Edward L. Carpenter was convicted on five counts of Fraudulent Schemes and Artifices, all Class 2 Felonies, and five counts of Fraudulent Schemes and Practices, all Class 5 Felonies. Carpenter, a local minister and former mortgage broker of Covenant Mortgage, convinced church members and others that he ran a “mortgage elimination” business in which he said he could legally remove the homeowners' names from the mortgages, causing properties to be owned free and clear. Using his sophisticated knowledge of the mortgage system and religious influence, Carpenter filed a series of fraudulent foreclosure paperwork with the Maricopa County Recorder's Office, which was designed to cloud title, confuse title companies, and cause local mortgage companies to fund loans to Carpenter. The Defendant received a total of over \$257,398.00 in illegal proceeds. Carpenter was sentenced on January 14, 2011 to 12 years in prison and ordered to pay full restitution.

**State v. Richard Mireles:** After being in trial for one week, Richard Mireles pled guilty on August 9, 2010, to second-degree murder and aggravated assault. Mireles was accused of providing a handgun to a juvenile in a drive-by shooting for the purpose of killing a rival gang member. The juvenile shot two people, killing one of them and seriously injuring the other. The juvenile pled guilty and was sentenced. Because the juvenile was under 14 years when he committed the crime, the death penalty was unavailable. Mireles was sentenced to 25 years in prison on September 7, 2010.

**State v. James Salzer:** On October 15, 2010, a jury found James Salzer to be a sexually violent predator (SVP). Salzer had two prior sex crime offenses out of Colorado, one for sex assault in 1996 and one for sex abuse in 1997. He moved to Arizona in 2004, registered, then left without giving notice. When he came back in 2006, he was charged with failure to register and sent to DOC. He was ordered to be confined at the Arizona State Hospital.

**State v. Rosalio Palacios:** On July 22, 2010, Rosalio Palacios was sentenced to seven years in prison with a three-year consecutive probation term, arising out of his major involvement in a human smuggling ring that smuggled several thousand illegal immigrants in the past several years from Mexico to drop houses in Phoenix and then on to various parts of the United States. The organization also served as an independent contractor to other human smuggling organizations, as well as providing maintenance of vehicles used to transport illegal immigrants. Palacios was also involved in using one or more members of the organization to obtain fraudulent motor vehicle titles for vehicles used to transport illegal immigrants. The investigation and prosecution of Palacios and his co-defendants resulted in the dismantling of this human smuggling organization, its leaders and its members.

**State v. Guillermo Ricardo de la Vara and Erlinda de la Vara dba Mortgage Notes, Inc.:** Guillermo Ricardo de la Vara and Erlinda de la Vara dba Mortgage Notes, Inc. pled guilty for defrauding investors by selling fraudulent real estate notes and deed of trust investments to 26 sets of Arizona residents. The investors were told the investment was risk-free, fully secured by real estate, and they would be in first lien position. After the De La Vara's companies went bankrupt, it was discovered that the investors were not in first position or that the appropriate documents were never recorded at all. Ricardo was sentenced on October 15, 2010 to 3.5 years in prison with a 7-year probation tail. He was also ordered to pay full restitution in excess of \$5.7 million and to perform 1000 hours of community service. Erlinda was sentenced to probation on April 30, 2010.

**State v. Patrick Francis Chorpensing, Sr.:** On October 19, 2010, Patrick Francis Chorpensing, Sr., who was the Director of the Arizona Department of Veterans Services from 1999 to 2007, was sentenced to two years on probation for Conflict of Interest, and Solicitation to Commit a Violation of the Procurement Code, both class 6 felonies, one of which will remain designated. He was also ordered to pay \$421,351.79 to the State of Arizona, which included unauthorized money paid by ADVS to Go Media in violation of the Procurement Code, plus an additional amount of \$38,595 which were unauthorized expenditures of ADVS money for employee meals and gifts.

**State v. Ernest R. Therrien:** On December 6, 2010, Ernest R. Therrien was sentenced to 3 years on probation for Solicitation to Commit Theft, a Class 5 Felony, with the requirement that Therrien pay the full amount of \$1,481,948.00 in restitution at the time of sentencing, to make all victims whole. The guilty plea arose out of a fraud scheme conducted through an entity called the "Pointe de Las Conchas," a corporation that was to develop a high end condominium complex in Puerto Penasco, Mexico. Between 2006 and 2008, Therrien made material misrepresentations and omissions to secure investments exceeding \$1 million to allegedly fund construction of the condominium complex, when no construction was actually being completed. Therrien was aware that the Department of Real Estate had explicitly prohibited him from executing contracts because a public report had not been issued for the development. The victims in this case were extremely pleased with the outcome, and were very happy with the service provided by the Attorney General's Office.

**State v. Claudia Washburn:** After a guilty plea, Claudia Washburn was sentenced on January 7, 2011 to seven months in prison for Hindering Prosecution, a Class 5 felony. Washburn is the mother of prison escapee John McCluskey and the aunt of McCluskey's co-defendant, Casslyn Welch. Washburn admitted to providing money to McCluskey through a third party. Washburn admitted she knew McCluskey had escaped from prison, and that the money would be used to help McCluskey flee from law enforcement. After receiving the money and other supplies from Washburn, the group of escapees fled to New Mexico where investigators believe the group kidnapped and

murdered James and Linda Haas. She was also ordered to pay \$5,000.00 to the U.S. Marshal's Service toward the costs of the investigation.

**State v. Jardon Armani LaForcarde:** On January 20, 2011, Jardon Armani LaForcarde was sentenced to seven years in prison, with a four-year probation tail, for committing Fraudulent Schemes and Artifices. The defendant was also ordered to pay \$610,852.60 in restitution to local financial institutions. LaForcarde recruited others to take fraudulent checks to various local financial institutions and cash the checks. The “check-cashers” were paid out of the funds secured when they successfully passed these forged checks at the bank. LaForcarde was especially talented in recruiting young women facing difficult financial situations. LaForcarde is responsible for recruiting upwards of 40 individuals into this criminal enterprise.

**State v. Richard Bradford:** Richard Bradford was sentenced on March 14, 2011 to five years in prison and ordered to pay restitution of \$1,228,416.36 on one count of Fraud Schemes, arising out of Bradford’s fraudulently holding himself out as an experienced, expert investment manager and someone who could guarantee positive returns to his “investors.”

**State v. Gary Miles:** Gary Miles, a documented gang member, was sentenced on April 29, 2011 to 8.75 years in DOC, with a 5 year probation sentence to begin after his release from prison, and a \$10,000.00 fine, for Conspiracy to Sell Narcotic Drugs, and to Illegally Conducting an Enterprise. Miles’ guilty plea arose out of his conspiring to provide crack cocaine to a drug house run by the Park South Crips criminal street gang on several occasions during the summer of 2008.

## **Drug Unit**

**State v. Hilario Vasquez:** The Section obtained a conviction after a bench trial against Hilario Vasquez on April 27, 2010 on the charges of Conspiracy and Transportation for Sale of Marijuana in an Amount over the Statutory Threshold. The defendant was involved with several other defendants in purchasing 300 pounds of marijuana from undercover officers for \$115,000.00. The case was investigated by the Department of Public Safety. The defendant was sentenced on May 28, 2010 to 15.75 years in the Department of Corrections.

**State v. Quezon Gray, Marshall Alston and Shelton Williams:** The Section obtained jury convictions against Quezon Gray, Marshall Alston and Shelton Williams on July 27, 2010 on the charges of Conspiracy to Possess/Transport Marijuana for Sale and Launder Money, Illegally Conducting an Enterprise, Possession for Sale of Marijuana and Possession of Drug Paraphernalia. The defendants possessed for sale 504 pounds of marijuana in a stash house. Investigators also seized \$150,660.00 in cash. The evidence found in the stash house revealed that the defendants were going to ship the marijuana to the East coast via Fed Ex and UPS. This investigation was a portion of a wiretap investigation conducted by Phoenix Police Department and numerous other

agencies. Each of the defendants was sentenced to five years in the Department of Corrections.

**State v. Robert Deals:** The Section obtained a jury conviction against Robert Deals on August 17, 2010 on the charges of Conspiracy to Possess/Transport Marijuana for Sale and Launder Money, Illegally Conducting an Enterprise, Possession of Marijuana for Sale over Four Pounds, Transportation of Marijuana for Sale in an Amount over the Statutory Threshold, Attempted Money Laundering, Misconduct Involving Weapons and two counts of Possession of a Narcotic Drug. The defendant was involved with several other defendants in purchasing 300 pounds of marijuana from undercover officers for \$115,000.00. The defendant failed to appear for the trial and the trial was conducted in absentia. The case was investigated by the Department of Public Safety. The defendant has since been apprehended and the sentencing is set for August 23, 2011.

**State v. Tommy Lee Pinkins:** The Section obtained a jury conviction against Tommy Lee Pinkins on January 18, 2011 on the Charges of Illegally Conducting an Enterprise and Transportation for Sale of Marijuana in an Amount over the Statutory Threshold. The defendant was a commercial truck driver who was transporting 482 pounds of marijuana in the cab of his truck. The case was investigated by the Department of Public Safety. The defendant was sentenced on March 18, 2010 to 10 years in the Department of Corrections.

#### **Medicaid Fraud Control Unit**

**State v. Albert Szu Sun Yeh:** Dr. Albert Yeh operated a pain management clinic one day a week where he systematically victimized the State of Arizona through massive amounts of fraudulent billings. Dr. Yeh operated this medical practice for the admitted purpose of making as much money as possible. To do this Dr. Yeh concocted a scheme to severely shorten patient visits, increase his patient load to a dangerous level, and then grossly inflate bills.

On January 13, 2011, Defendant Yeh entered a plea of guilty to the following, Count 4: Fraud Schemes and Artifices, Count 8: Illegal Control of An Enterprise, and Count 40: Money Laundering. This plea required Yeh, a medical doctor, to permanently surrender his Arizona medical license. Also, as a result of this prosecution, Yeh has permanently surrendered his Nevada medical license.

On March 11, 2011, Defendant Yeh was sentenced to 2.5 years in prison, followed by five years probation. Yeh was also required to pay \$683,038.00 in restitution to the Arizona Health Care Cost Containment System (AHCCCS).

**State v. Corina Maya Hollander:** A Tucson podiatrist, Dr. Corina Hollander, orchestrated a large scale fraud scheme involving prescription drugs for the past four years. Evidence established that Dr. Hollander and her staff were filling fraudulent prescriptions under the name of at least four of her elderly patients and some of her staff's family.

Dr. Corina Hollander was indicted on June 28, 2010 by the Pima County Grand Jury. On March 3, 2011, the Defendant Hollander entered into a plea agreement on Amended Count 1: Attempt to Commit Conspiracy, A Class 3 Felony, Amended, Count 4: Attempted Fraudulent Schemes and Artifices, a Class 3 Felony, Amended Count 7: Attempted Trafficking in the identity of Another Person, a Class 3 Felony, and Amended Count 16: Acquisition of a Narcotic Drug by Fraud, a Class 3 Felony.

On May 2, 2011 Defendant Hollander was sentenced to be incarcerated for 33 months on Count 1, a concurrent 33 months on Count 4, a concurrent 33 months on Count 7, and 5 years probation for Count 16.

**State v. Tyler Deane:** Information was developed about a large drug diversion ring headed up by Tyler Jensen Deane. Investigators learned that Deane was working with a medical assistant named Leanne Roxberry Durivage. Ms. Durivage worked for an East Valley physician who is a Medicaid (AHCCCS) provider. Since June 1, 2010, 14 individuals have passed a total of 35 fraudulent prescriptions for a total of 5310 pills. Almost all of the pills acquired by the group were Oxycodone 30 mg which have a street price of between \$15.00 and \$30.00 per pill. Using the DEA street price formula, the total value of the drugs obtained by fraud is between \$79,650.00 and \$159,300.00.

Defendant Deane was indicted on September 15, 2010 by the Arizona State Grand Jury on one Count of Participating in a Criminal Syndicate, one Count Fraudulent Schemes and Artifices, one Count of Money Laundering in the first Degree, one Count of Possession of a Narcotic Drug for Sale above the Threshold, one Count of Conspiracy, one Count Sale of a Narcotic Drug in a Drug-Free School Zone, one Count of Sale of a Narcotic Drug, 30 Counts of Acquisition of a Narcotic Drug by Fraud, four Counts of Taking the Identity of Another Person, 29 Counts of Forgery, one Count Criminal Possession of a Forgery Device, and one Count of Theft.

On April 27, 2011 Defendant Deane entered a guilty plea on Count 1: Participating in a Criminal Syndicate, a Class 2 Felony, and was sentenced to prison for 5 years, and sentenced to prison for 2.5 years on Count 45: Taking the Identity of Another, a Class 4 Felony, and ordered to pay \$5,000.00 for the cost of prosecution.

**State of Arizona v. Donn L. Dove:** Between February 6, 2004 and November 4, 2005, Defendant Tekishia Kale Victoria Scroggins aka Tekisha Greer, worked as an Administrative Secretary for an AHCCCS-funded medical group. During that time period, she embezzled approximately \$700,000.00 from the medical group by submitting fraudulent invoices and then Greer used this scheme to issue more than 100 phony checks. The fraudulent checks, totaling over \$700,000.00, were deposited into fake business accounts that belonged to Defendant Donn L. Dove and Defendant Towan Butler. Many of the checks were

then routed from the fake business accounts into Tekisha Greer's personal account.

On March 18, 2009, all three defendants were indicted by the State Grand Jury and charged with one Count of Theft, one Count Fraudulent Schemes and Artifices, and one Count of Money Laundering. On February 10, 2010, Defendant Dove entered a plea of guilty to an amended Count 1: Theft, a Class 4 Felony and Count 2: Fraudulent Schemes and Artifices, a Class 2 Felony. On February 25, 2011, Defendant Dove was sentenced to a term of imprisonment and is committed to the Arizona Department of Corrections for 2.5 years for Count 1 and upon release he is to serve three years probation.

### **BORDER CRIMES ENFORCEMENT SECTION:**

Attorneys: 7  
Support Staff: 8

### **Victims' Rights Litigation**

#### **State of Arizona v. Franklins et al.**

AGO was prosecuting both a criminal enterprise case with various identified victims and a parallel civil forfeiture action against the defendant business entity. The victims in the criminal case had asserted their VBR right to refuse to be interviewed by the defense. Because these same victims were potential witnesses in the civil forfeiture, the defense filed notices to take depositions of the victims/witnesses in the civil case. Both the criminal and civil courts denied the State's motions for protective orders and the civil court ordered the depositions. AGO then filed a Special Action seeking interlocutory relief from pretrial order, as the issue was one of first impression and was of statewide importance to criminal justice system. The COA ruled for AGO, reversing the civil trial court, emphasizing that the legislative intent in VBR enacted in 1990 was to protect a crime victim's privacy and to minimize contact with a defendant prior to trial. From this Special Action, crime victims in Arizona now have clear protection from a calculated defense strategy to use a civil discovery mechanism to circumvent VBR.

#### **State of Arizona v. Von Borstal/Suarez**

In 2010, an F.B.I. investigation determined the sitting mayor of Nogales was soliciting payments characterized as "consulting fees" from local businesses with promises to use his influence as mayor to direct city contracts to these businesses. A separate F.B.I. investigation determined that the mayor and his father, Suarez, also defrauded Western Union by negotiating over \$3.2 million in forged money orders during a three-month period in 2007. Both Defendants entered guilty pleas and will be sentenced to prison terms between two to four years on August 29, 2011.

### **State of Arizona v. Zandonatti et al.**

AGO indicted a multi-million dollar mortgage fraud case with 42 victims charging the two Defendants with commission of fraud, theft, money laundering, illegally conducting an enterprise, and conspiracy. An FBI investigation determined that the Defendants were using straw-buyers and/or investors to flip Pima County homes out from under renters who had signed rent-to-own contracts with the Defendants. Approximately \$2.9 million in foreclosure losses occurred because of the speculative nature of these schemes. The Defendants entered guilty pleas to Conspiracy, Fraud, Criminal Enterprise and Money Laundering on June 14, 2011. Sentencing is pending with the Superior Court.

### **State v. Celaya**

The Defendant was working with a group of Mexican nationals in facilitating in widespread credit card fraud. The credit card fraud ring was purchasing stolen credit card account numbers online from “hackers” in Russia. The group was then stealing blank Visa gift card to encode the magnetic strip on the back of the cards. The group then provided other Mexican nationals the modified gift cards. A coordinated raid by State and Federal authorities resulted in the seizure of re-encoders, card presses and foiler devices capable of producing up to 1,000 cards an hour. The Defendant has entered a guilty plea and is being sentenced on September 1, 2011.

### **State v. Walker**

The Defendant worked as a bookkeeper for Security Fence of Arizona, Inc., a business from which she embezzled approximately \$565,000.00 over a period of years. She was indicted and entered guilty pleas. She was sentenced to jail and ordered to pay \$1,000,000.00 in restitution to the victim.

### **State v. Diasseny et al.**

These five South African Defendants were involved in a nation-wide criminal enterprise that de-codes the original data on the magnetic strips of the debit cards and re-encodes the magnetic strip with stolen bank account information. After a 911 call reporting a possible drug deal at a local hotel, the Defendants were arrested and charged with conspiracy, fraud, money laundering, illegal control of an enterprise, 20 counts of forgery, and unlawful possession of a scanning re-encoder. This group has eluded arrest in Missouri and South Carolina, but some co-conspirators have been charged in Colorado, Wisconsin, and New York. The U.S. Secret Service has an on-going investigation against these suspects and other known co-conspirators not caught in Arizona. All defendants entered guilty pleas and have been sentenced to prison and jail.

### **State v. Villalvazo**

The Defendant worked as an office administrator at an Edward Jones investment branch in Nogales. She forged 50 wire transfer documents and completed 49 fraudulent transfers of client funds and attempted to conceal the character of the stolen funds. The Defendant was sentenced to jail and the court ordered approximately \$1,000,000.00 in restitution.

### **State v. Valencia-Rodriguez et al.**

AGO indicted 46 members of a drug trafficking organization working on behalf of the Sinaloa Cartel on charges of drug and human trafficking, money laundering and wire counts. This group was responsible for coordinating importation of multi-ton quantities of marijuana and illegal aliens from Mexico into the United States through the San Miguel Gate area and the smuggling of bulk drug proceeds and assault weapons back into Mexico. The San Miguel Gate area is a remote U.S./Mexico border location on the Tohono O'Odham Indian Reservation which allows tribal members to pass freely between the United States and Mexico. Law enforcement intelligence linked over 150 drug seizures since May 2008 totaling approximately 28,000 pounds of marijuana to DTO. This case is in active prosecution.

**State v. Ergonis:** Four defendants participated in a violent, ambush-style kidnapping where the victim was tied up and threatened with guns and knives for over nine hours. Three defendants pleaded guilty but Ergonis rejected a plea and was convicted after a three-week jury trial. Ergonis also made threats against the AAG prosecuting the case. Ergonis was sentenced to 22.5 years in prison.

**State v. Burch:** Tucson Medical Center contacted Tucson Police Department to report an incident of suspected child abuse after an eight year-old child was admitted in a "spindle" coma, a term which denotes the association of alteration of consciousness. No known cause for the child's condition could be determined. When medical staff inadvertently observed the child's mother place something in the girl's mouth, the treating physician ordered toxicology screens on the pill and the child's fluids, which tested positive for dangerous drugs. The Defendant entered guilty pleas to dangerous-nature child abuse counts and was sentenced to 7 years in prison.

**In re: JP Morgan Chase:** In December, 2010, police executed search warrants on properties associated with a DTO and confiscated approximately \$400,000.00 in cash, eight vehicles, and about \$40,000.00 in gold and diamonds. AGO has filed *in personam* complaints against all of the indicted defendants for treble damages and substitute assets. Based upon the transactions during the investigation, the range of judgment is in the range of \$5,000,000.00. This case is pending.

**In re: \$305,014.00:** After a traffic stop on Interstate 10 where a driver gave confusing and inconsistent answers to the officer's questions and a dog alerted on the vehicle, police located \$305,014.00 hidden in a console behind the dash board and secreted in the seats were several vacuum sealed bags containing. The cash was forfeited to the Arizona Attorney General's Anti-Racketeering Fund.

### **Financial Remedies Section**

Attorneys:	10
Support Staff:	9

The Financial Remedies Section employs Arizona's civil racketeering remedies to combat the effects of organized criminal conduct on legitimate commerce. FRS focuses primarily on money laundering in drug, fraud and other financial crime contexts. FRS supports statewide efforts to deprive racketeers of the profits that keep them operating. During this fiscal year FRS forfeited approximately \$8,249,395.76 as racketeering proceeds. Attorneys in FRS also advise and provide training to law enforcement on a statewide basis in the areas of forfeiture, money laundering and racketeering.

**State v. Angulo:** PPD drug trafficking case in which approximately \$1.2 million in cash and bank accounts were seized. Also seized were a "Series 6" liquor license, jewelry, motor vehicles, and miscellaneous assets as well as weapons to be destroyed. The final Order was received on March 4, 2010. The liquor license was sold on May 18, 2010 for \$90,000.00. All of the vehicles have been sold at auction for \$65,488.00. Sale of the real property in Tonopah has been completed and a final distribution will be completed in the near future.

**State v. Joel De La Rosa:** On December 15 and 16, 2010, the Financial Crimes Task Force (Phoenix Police Department, Arizona Attorney General's Office, ICE and the Arizona Department of Public Safety) assisted by; Cochise County CI, MAGNET CI, Tucson CI, Southern Division GITEM, Tucson HPB, Phoenix HPB, Southern K9, Central K9, Phoenix PD DEB and the Marshals Fugitive Task Force served 12 search warrants, served 12 arrest warrants and conducted nine residence consent searches for the conclusion of the De Ja Vu Title III investigation. The investigation resulted in the seizure of over 1,600 pounds of marijuana, \$386,000.00 in US currency, 25 vehicles, and 12 weapons. A total of four undocumented aliens were turned over to ICE. The investigation resulted in the indictment of 21 subjects on 20 drug related charges. This case has a substitute assets figure of approximately \$2.2 million. Further investigation yielded two parcels of real property that have equity and were included in the NOPF after securing and recording a Seizure Warrant. There is a pending valid claim filed on behalf of the Neutzis' who were subjects involved in the investigation but were not prosecuted criminally.

**State v. Ferguson:** ACC case involving securities fraud/Ponzi schemes. Defendant pled guilty and agreed to a victim restitution order of \$3.105 million and a prison sentence of five years. Approximately \$670,000.00 of property, including a condominium, automobile, and jewelry has been forfeited and liquidated. The only property left to be liquidated is \$148,000.00 in a bank account in the Isle of Jersey, which has yet to be repatriated; DOJ is assisting in the repatriation. Approximately \$483,000.00 has been distributed to victims and a final distribution will be made once the repatriated funds are received.

**State v. Global Medicine:** PPD and FDA case involving the illegal sale of generic prescription medicines purchased from India by a de-licensed “sovereign freeman” doctor. The Order of Forfeiture was entered for approximately \$150,000 in cash, five parcels of property worth more than \$1.1 million, and an in personam judgment for approximately \$1.6 million. Runke’s daughter and her husband Joe Porcello settled and paid \$216,000.00 in cash. One parcel of real property sold and netted approximately \$1.4 million and the other four properties are on the market.

**State v. Sonoqui:** PPD case involving a wiretap investigation of members of the Garibaldi-Lopez drug enterprise, which was responsible for transporting thousands of pounds of marijuana across the Tohono O’odham Indian Reservation. A total of \$516,000.00 in cash and 19 cars were seized. The State’s application for order of forfeiture was granted August 27, 2010. Vehicles and personal property have been liquidated and the proceeds are approximately \$86,000.00. A final distribution in the amount of \$603,796.90 was completed.

**State v. Yeh:** Drug Diversion Task Force, DEA and PPD case involving a forfeiture action that arose from prescription drugs illegally prescribed by a doctor to patients in violation of drug laws, and the doctor's submission of fraudulent requests for payment to private insurers and AHCCCS arising from the purported treatment. Seized funds total \$1.7 million, fraudulent payments exceed \$3 million, and additional \$7 million in treble damages are sought. Substantial additional charges were filed against Yeh in his pending criminal case in mid-June, 2010. The State entered into a settlement agreement with the Yeh Defendants releasing only \$50,000.00 and the vacant parcel of land to the Yeh Defendants and forfeiting approximately \$1.7 million to the State. The signed settlement order was received March 23, 2011. Under review is a case against Uptown Pharmacy, the only remaining defendant, to determine whether it is best to proceed with the State case or ask federal authorities to seek administrative remedies.

## Special Investigations Section

Sworn Peace Officers:	35
Investigative Support:	06
Support Staff:	05

During FY 2010/2011, the SIS was able to replace vacancies created by retirements and expanded the Section by four sworn positions. SIS Major Fraud units devoted significant resources to advance priority sensitive public corruption cases. SIS Agents supporting the Financial Remedies, Health Care Fraud and Abuse, and Consumer Fraud Sections, were successful in meeting unprecedented investigative demands. AGO initiatives targeting the dismantling of the financial structures of drug trafficking organizations, and the growing national problem of prescription drug diversion abuse enabled by corrupt health care practitioners, have resulted in a marked increase in asset forfeiture and prescription drug diversion investigations. Statistics also clearly indicate calls for assistance from the public (duty calls) and other law enforcement agencies remain at a high level.

### Major Cases

Many of the successfully prosecuted cases outlined previously by other sections in this report were also investigated and supported by members of SIS.

#### **MAJOR FRAUD UNIT 1 (MFU1)**

**Robert Amini:** Mohammad Reza Amin-Sobhani (aka Robert Amini), former member of the Al-MaMahdi Benevolent Islamic Foundation of Arizona (AMBIFA) was indicted in May 2011 by the State Grand Jury of 24 fraud scheme related charges and losses in excess of 2.4 million dollars. The FBI conducted the fraud investigation and the case is being prosecuted by the AGO. This case originated as a duty agent call whereby Agents within MFU1 were able to determine there were likely federal investigative connections and through an FBI deconfliction, were able to successfully assist and then transition the case to the FBI. The AGO FRS is now also pursuing civil asset forfeiture.

**Miguel Rodriguez Alvarado/Max Montijo LaMadrid:** Alvarado and LaMadrid were both arrested in Mexico on Provisional Arrest Warrants obtained by Agents within MFU1 and subsequently were extradited for felony crimes they committed within the United States. Alvarado allegedly murdered his wife in an act of domestic violence by stabbing her to death and then fleeing to Mexico. LaMadrid allegedly murdered an innocent bystander in retaliation for the shooting death of one of his friends. LaMadrid also fled to Mexico to avoid capture and adjudication and was subsequently also arrested and extradited. Both subjects are in custody within the U.S. awaiting trial for their alleged crimes. Agents within MFU1 continue to be the point of contact for many law enforcement agencies throughout the State of Arizona for assistance with obtaining Provisional Arrest

Warrants and the extradition of fugitives fleeing to Mexico after committing major violent felony crimes within Arizona.

**Stephanie S. Brown:** Brown was an Arizona resident that had committed theft in excess of \$430,000.00 worth of coins from a New York resident whereby AGO Agents were asked to assist the New York District Attorney's Office in the execution of search warrants and the arrest of Brown in October 2010. Brown had represented herself as a coin expert to the elderly victim in New York and offered to assist her with "arranging" coins that Brown had previously sold to the victim. While "arranging" said coins, Brown removed approximately 52 coins and returned to the State of Arizona, where she attempted to resell the coins to Arizona victims. Overall, Brown committed thefts in excess of one million dollars and she pled guilty to two felony charges and was sentenced to prison. The successful execution of the search warrants and the arrest and extradition of Brown to the State of New York by MFU1 Agents were formally commended by the New York District Attorney's Office.

**George E. Contreras and other Phoenix Police Department Police Officers:** In November 2010, George E. Contreras and three other Phoenix Police Officers, Benjamin Sywarungsymun, Aaron Lentz, and Steve Peck, were indicted on felony charges related to theft and fraudulent schemes as they are alleged to have knowingly been paid for providing off-duty services to the victim(s) when they were not on the property and/or providing said services. This investigation by MFU1 Agents originally considered approximately 30 Phoenix Police Officers, as referred by the Phoenix Police Department, and while the investigation revealed many of those officers allegedly also committed thefts related to the same off-duty job, the majority were under the felony threshold as charged, thus were referred back to the Phoenix Police Department Internal Affairs Bureau for further consideration within PPD policy. Contreras was also charged for crimes alleged to have been committed against other victims through off-duty services, which he also is alleged to have not performed, however was paid. Contreras had served as the off-duty coordinator for the jobs considered in this investigation and has since retired from the Phoenix Police Department.

**Gregory B. Gill:** Gill had been previously charged in two criminal matters. One scheme involved sales of investments, primarily to elderly individuals, involving the factoring of accounts receivables and credit card debt. The investments were touted as being as safe as certificates of deposit. However, over 80 investors lost more than \$10,000,000.00. While Gill was out on bond awaiting trial for the first scheme, he solicited \$154,000 for investments, including a Las Vegas condominium project as well as for a casino in Vietnam. Although Gill had previously entered into a plea agreement prior to trial and been sentenced to prison, the Court of Appeals reversed the conviction and returned the matter for trial within 90 days. By the time this matter returned to the AGO for trial, neither the original prosecutors nor investigators were available to assist in the preparation. In order to quickly prepare for trial, the case team reviewed evidence contained in more than 70 boxes and interviewed numerous witnesses and victims. The team also obtained and reviewed extensive recordings of jail

conversations in which Gill acknowledged elements of the offense. Gill's position moved from a stated desire to go to trial quickly to Gill ultimately entering into plea agreements to resolve both matters. In the first case Gill pled guilty to 2 counts Fraudulent Schemes (2F) and 2 counts Fraud in the Sale of Securities (4F); in the second case Gill pled guilty to 1 count amended Fraudulent Schemes (2F). He was sentenced to serve 11.25 years in prison and to pay more than \$10,000,000.00 restitution.

**Robert Mark Green:** Beginning in November 2009, Robert Mark Green attempted to receive public funding of his campaign to become State Senator for Arizona in District 7. Although he submitted the required number of Qualifying Contribution forms, analysis of the signatures of voters revealed that many did not match the signatures on file for the voter as determined first by the Maricopa County Recorder and then through handwriting analysis by a private firm. In the course of the investigation, some of the purported donors signed statements indicating they did not sign the Qualifying Contribution form. Although Green blamed some of the non-matching signatures on a rogue volunteer, whom he could not name, the Arizona Department of Public Safety later compared the handwriting on some of the questioned forms and determined the signatures of some purported voters matched the handwriting exemplars written by Green. In addition, the bank records did not substantiate the claim by Green that he had gathered the \$5.00 cash donations, as a substantial portion of the funds came from several single donors providing 'seed' money. Green was indicted on one count of Attempted subsequently entered into a plea agreement. In October 2010, Robert Green was indicted on one count each of Attempted Theft (4F) and Fraudulent Schemes and Practices (5F); 2 counts Forgery (4F); four counts Prohibited Contributions (6F); and six counts Perjury (4F). On 3/8/11, Green was sentenced related to guilty plea to 1 count of Forgery, 4(F). He was sentenced to 4 years supervised probation and ordered to pay a total fine of \$21,479.00, which was also the amount Green attempted to obtain through the fraud.

**Kacee Sissener:** Kacee Sissener, a former Scottsdale office manager was sentenced for embezzling more than \$250,000.00 from a Scottsdale based medical practice and pled guilty to theft and fraudulent schemes and artifices after an investigation was conducted by Agents within MFU1. Sissener had been the office manager and had access to the medical practice's bank accounts and over an 18-month timeframe, transferred money from the business account to her personal account which she then often used to pay her credit card bills. Sissener pled to two felony charges, to over \$256,000.00 in restitution for the victims, and is serving concurrent seven and four year sentences for her crimes.

**United States Marshalls Service Fugitive Roundup:** Agents within MFU1 and MFU2 provided law enforcement assistance to the U.S. Marshalls Service during "Operation Justice III" whereby over 250 fugitives were captured in a one-week timeframe. Per U.S. Marshall David Gonzales, "Fugitives are a major obstacle to federal, state, and local law enforcement in reducing the crime rate in our communities. There are an estimated 2.7 million outstanding felony warrants in the United States. These fugitives, while on the run, commit a variety of

additional crimes in order to survive. The arrest of these fugitives in Maricopa and Pinal counties prevented hundreds of additional victims of crime and saved millions of dollars in property loss and medical care.” The Special Investigations Section of the Arizona Attorney General’s Office continues to partner and work in concert with the U.S. Marshall’s Service for the apprehension of fugitives who have fled to other countries, in addition to providing agent assistance with this annual domestic felony fugitive roundup.

## **MAJOR FRAUD UNIT 2 (MFU2)**

**Patrick Chorpenning:** Former, director for the Arizona Veterans Services Department, Patrick Chorpenning, plead guilty to two class 6 felonies. These felonies involve Chorpenning hiring his wife as a decorator for the Veteran’s Home in Phoenix, and for violation of the State Procurement Code by hiring a company called Go Media to purchase \$400,000.00 in marketing services without bidding the services out or having a contract with the company, or having a system to verify the services were actually provided. Chorpenning was placed on probation and required to pay over \$400,000.00 restitution. The Auditor General assisted in the investigation.

**Brent Emerson:** Brent Emerson and 3 co-conspirators developed a telemarketing business called Guaranteed Prescriptions, which sold a home based business opportunity. The victims paid thousands of dollars, but had no sales from their business. When a civil suit was initiated by the Attorney General’s Office the business was changed to International Travel Connections. A criminal investigation was begun in 2007 with search warrants effectively closing the business in 2008. Brent Emerson was sentenced to 2.5 years in prison, and the other 3 defendants were convicted of felonies and received probation. The victims lost over \$18,000,000.00 in this scheme.

**Jo Ann Conley:** Jo Ann Conley embezzled over \$161,000.00 from her employer, Jack Rayner & Sons of Ehrenberg, AZ. She was employed as their book keeper from 2000-2007. She diverted funds by issuing herself extra checks and entering them as paid to other employees. She also used the company funds to pay her credit card bills. This investigation was initiated in 2008, and in 2011 Conley plead guilty to theft and Fraud Schemes and was sentenced to 2.5 years DOC and ordered to repay \$113,540.00 in restitution.

## **CONSUMER PROTECTION & ADVOCACY UNIT (CPA)**

**Consumer Benefits Research Group:** The Consumer Fraud Protection Section won a summary judgment against Consumer Benefits Research Group in the amount of \$455,000.00. Consumer Benefits Research Group. The Mesa telemarketing company and its principals, Cory McCormick and Robert Meier, deceived elderly consumers throughout the country, claiming to sell an identity-theft protection program. Victims were charged \$388.00 for a packet of generic and often outdated information on how to avoid scams and offered a consumer hotline that was never actually available to consumers.

Victims were later asked to pay another \$456.00 to participate in an Identity Watch Program that was similarly bogus. The court found the company in violation of the Arizona Consumer Fraud Act and Telephone Solicitation Statute.

Investigative support was provided in a Consumer Fraud lawsuit filed on 07/27/2010 against Guardian Group, LLC. for engaging in deceptive mortgage loan reduction services involving more than 2500 consumers.

On August 9, 2010, CPA reached a \$1,881,400.00 settlement by consent judgment with Pulte Home Corporation and Pulte Mortgage, LLC. CPA with the assistance of SIS Agents had been investigating Pulte's pre-qualification practices, earnest money deposit policies, and Spanish-language marketing efforts for violations of Arizona's consumer protection law.

On 10/6/2010, settled with Wells Fargo for \$2.1 Million to AGO regarding deceptive marketing of POARMS. Consent judgment will provide approximately \$154 Million in mortgage relief in Arizona alone. Total of \$772 Million in mortgage relief across 8 states.

On 10/29/2010, settled with Home Loan Center, Inc (aka Lending Tree) for \$1.15 Million over deceptive marketing of POARMS.

Investigators involved in a multi-state investigation involving the manufacture and marketing of an alcoholic and caffeinated beverage named Four Loko. Four Loko manufacturers, Phusion Projects, agreed to pull its product off the shelf and remanufacture without caffeine.

Investigators were involved with the investigation of attorney Marc J. Victor, PC or marketing loan modification services which was settled by AOD for \$15,000.00 plus customer restitution.

CPA obtained \$458,000.00 settlement against Better Choice Investments, LLC and Better Solutions, LLC, in a foreclosure scheme. Investigative assistance was provided by SIS Agents.

CPA obtained \$581,533.00 default judgment against Marvin Williamson and his loan modification company Asset Creation, LLC.

CPA obtained \$185,000.00 settlement as part of a multi-state settlement involving DIRECTTV.

CPA settled with Chase Home Finance, LLC for \$100,000.00. Assurance of Discontinuance also provides that Chase will commit \$600,000.00 towards foreclosure prevention education and workshops.

SIS Agents testified at evidentiary hearing where CPA was awarded \$7.39 Million in civil penalties against Property Tax Review Board on 01/06/2011.

The case against a loan modification company called The Guardian Group as so far resulted in \$25,000,000.00. Consent judgment as of April 2011.

SIS Agents assisted in the case against Consumer Benefits Research Group resulted in Summary Judgment in the amount of \$455,000.

The case against a loan modification group called Principal Reduction Group was settled by consent judgment on 03/29/2011 for a total of \$195,000.00 in restitution and penalties

### **FINANCIAL REMEDIES SECTION (FRS):**

**Marco Antonio Sonoqui:** Case was initiated by the Phoenix Police Department. It involved a major drug trafficking organization and the seizure of over 13,000 pounds of marijuana. SIS Agents supporting FRS assisted in the identification of approximately \$600,000.00 in assets which was forfeited pursuant to an order issued in September 2010.

**GM & S Games:** Case was initiated by the Arizona Department of Gaming, with major assistance provided by SIS Special Agents supporting FRS. It involved the seizure of approximately 75 illegal "coin pusher" gaming machines from over 40 locations. Approximately \$26,000.00 was found in the machines and was also forfeited. The order was issued in November 2010. The machines were subsequently destroyed.

**De Ja Vu Title III Investigation:** SIS Special Agents and detectives from the Financial Crimes Task Force (Phoenix Police Department, Arizona Attorney General's Office, ICE and the Arizona Department of Public Safety) assisted by several other state, local and federal agencies; served 12 search warrants, and conducted 9 residence consent searches for the conclusion of the De Ja Vu Title III investigation. The investigation resulted in the seizure of over 1600 pounds of marijuana, \$386,000.00 in US currency, 25 vehicles, and 12 weapons. A total of 4 undocumented aliens were turned over to ICE. The investigation lead in part by an SIS Special Agent resulted in the indictment of 21 subjects on 20 drug related charges.

**Cocaine Drug Trafficking Organization:** Special Agents assigned to the HIDTA Task force (MISTIC) and their fellow detectives conducted an investigation of a cocaine drug trafficking organization (DTO) with connections in Peoria, AZ. During the course of a surveillance operation, an AGO Special Agent assigned to the team was shot. Despite being wounded, the Agent actively participated in the subsequent arrest of one of the two suspects. The Agent was treated and released and is recovering. One suspect believed to be the shooter remains outstanding.

**Albert Yeh:** This case was initiated by the AHCCCS Fraud Unit and involved illegally prescribed prescription drugs and fraudulent submissions to insurers and AHCCCS for reimbursement. Special Agents supporting the Financial Remedies

Section assisted in the identification of Yeh's assets. Approximately \$1.7 million in assets was forfeited pursuant to an order issued in March 2011.

**FRS Training Circuit:** In order to educate the Arizona law enforcement community on issues related to money laundering and asset forfeiture, several members of the FRS have partnered with AZPOST and have traveled the state providing training. The training locations have even reached such outlying communities as Sierra Vista and a training session is planned for later in 2011 for Flagstaff. The FRS members providing the training include FRS Chief, FRS Assistant Attorney Generals, Special Agent Supervisor and Special Agents assigned to the Financial Fraud Task Force.

**Motorola Seavy Award:** October 2010 - The International Association of Chiefs of Police (IACP) awarded the Arizona Attorney General's Office with the Motorola Seavy Award for ingenuity in law enforcement. The award recognized the groundbreaking investigative efforts in the Western Union Investigation which resulted in a \$94 million settlement which has afforded grant opportunities for the border states of NM, AZ, CA, and TX to assist in the battle against human and drug smuggling.

**Medicaid Fraud Control Unit (MFCU):**

**Albert Yeh:** Case involves a Mohave County medical doctor Albert Yeh who was sentenced On March 11, 2011, to 2.5 years in prison ordered to \$1,707,595.00 of his seized assets.

The Dr. Yeh investigation had been initiated and conducted by the DEA and the AG's Drug Section and then joined by the Attorney General's Health Care Fraud and Abuse Section whose investigators and prosecutors helped develop the evidence of Medicaid fraud which was the motive for Dr. Yeh's illegal drug prescribing activity. The investigation was also aided by the HHS-OIG.

The DEA undercover agents (UC's) had made 11 visits to Dr. Yeh's practice in Golden Valley, Arizona and although these UC's purposely acted as if they were merely were drug seekers, prescription pain pills were prescribed all 11 times, sometimes following a "health care" visit that was completed in less than two minutes. The investigation also discovered that even the most basic element of a health care examination, the taking of vital signs, was routinely being faked. The investigation developed evidence that Dr. Yeh instructed his staff to use a computer template that automatically entered a string of phony vital signs into the patient's medical chart. This was one glaring example of what Dr. Yeh would do to expedite the movement of 140 or more patients through his office in just seven (7) hours.

In addition to receiving 2.5 years of prison, the \$1,707,595.00 of his seized assets have been distributed as follows: \$683,038.00 of the money seized was returned to the AHCCCS program, \$170,759.50 was deposited in the State's

RICO fund and the remaining \$853,797.50 was distributed to DEA which in turn distributed the money to eight law enforcement agencies in Arizona and Nevada.

**Corina Hollander:** HCFA and DEA's Tucson Tactical Diversion Squad worked jointly to investigate and prosecute a seven (7) person drug diversion ring that was masterminded by podiatrist Corina Hollander. The investigation produced evidence of illicit drug use taking place both at her home and her Tucson podiatry office. A search warrant conducted on her home and office produced evidence of large scale prescription drug crimes and evidence that Hollander was distributing fraudulent prescriptions to non-patients for fraudulent purposes. On March 30, 2011, Hollander pled guilty to attempted conspiracy, attempted trafficking in the identity of another person, attempted fraud schemes, and obtaining a narcotic drug by fraud. On May 2, 2011, Hollander was sentenced to 33 months in the Arizona Department of Corrections (DOC). Her two main associates, Aaron Garner and Kenneth Morris, were sentenced to 18 months and six (6) months of incarceration respectively.

**Carol Acha-Morfaw:** The HCFA Section investigated allegations of fraudulent claim sheets being submitted by AHCCCS funded care giver Carol Acha-Morfaw. For 16 months, Acha-Morfaw would claim that she was providing 56 hours of care a week to an AHCCCS client living at home who was confined to a wheel chair. In reality, Acha-Morfaw would only provide 10 hours of care per week, leaving the victim unattended for up to 36 hours at a time. This fraud and neglect resulted in the victim having to sleep in her wheelchair. The victim was told by the suspect that if she were to report the neglect and fraud, no one would care for her and she would have to go to a nursing home. On May 28, 2010, suspect Carol Acha-Morfaw pled guilty to the Class 5 felony charge of Vulnerable Adult Abuse for having recklessly caused or permitted the victim's health to be endangered. On September 9, 2010 the defendant was sentenced to 3 months in jail and ordered to reimburse the AHCCCS program \$27,000.00.

**Tyler Deane:** The Tyler Deane drug diversion ring investigation, which was worked jointly by Peoria PD and the HCFA, began in July, 2010 when a Peoria Police Officer had learned of a single fraudulent prescription that had been passed at a local pharmacy. Significantly, he also had learned that the crime had been committed with the likely aid of a corrupt medical assistant who was working at a Medicaid certified doctor's office. A joint 3 month investigation ensued which resulted in 20 persons being charged for numerous drug diversion crimes. All totaled, the ring had passed 35 fraudulent prescriptions for a total 5310 pills, almost all Oxycodone, which has a street price of between \$15.00 and \$30.00 per pill. Using the DEA street price formula for the drugs obtained by this group, the total value of drugs obtained by fraud was between \$79,650.00 and \$159,300.00. The principal leaders of the crime ring have been sentenced to DOC as follows: Tyler Deane received a sentence of 7.5 years; the corrupt medical assistant, Leanne Durivage, was sentenced to 5 years; Kenneth Rump was sentenced to 6.5 years; and Samuel Chung was sentenced to 4 years.

**Tekishia Greer a.k.a. Scroggins:** HCFA investigated a \$700,000.00 internal theft from Cigna Medical Group. The insider in the scheme was defendant Tekishia Greer (aka Scroggins) who worked as an Administrative Secretary for CIGNA Medical Group. Greer had submitted fraudulent invoice information that ultimately resulted in over \$700,000.00 being deposited into fake business accounts that belonged to the co-defendants Donn Dove and Towan Butler. On March 18, 2009, all three defendants were indicted by the State Grand Jury on charges relating to the thefts.

On November 6, 2009, Defendant Butler pled guilty to Theft, a class 3 felony. On April 14, 2011, he was sentenced to four years probation and ordered to pay restitution to victim in the amount of \$748,485.37.

On February 10, 2010, Defendant Dove pled guilty to Fraudulent Schemes and Artifices, a class 2 felony and Theft, a class 4 felony. On February 25, 2011 he was sentenced to 2.5 years in prison and ordered to pay restitution to victim in the amount of \$748,485.37.

**Ruby Hoagland:** HCFA and the Tucson Police Department investigated allegations of embezzlement committed by Ruby Hoagland, an accounts payable worker at CODAC Behavioral Health Services in Tucson. The investigation developed evidence of \$90,000.00 in unauthorized purchases being made by Hoagland using the organization's funds. The defendant pled guilty to Theft, a Class Two Felony and was sentenced on May 27, 2011 to seven year's probation, with incarceration in the Pima County Jail for sixty days. In addition, Hoagland was ordered to repay CODAC \$90,348.00 and the City of Tucson \$14,363.11.

**De Anna Altamirano:** On April 28, 2011, the Pima County Grand Jury indicted De Anna Altamirano on fraud and drug related crimes. Altamirano was employed as a Walgreens pharmacy technician when she was discovered by Walgreens pharmacy security to be altering prescription information of her relatives in order to acquire unauthorized refills of their medications. Altamirano was interviewed by pharmacy security and the Tucson Police and admitted to fraudulent obtaining 20 prescriptions. This case was referred to the HCFA who conducted additional investigation and determined that the suspect was tied to 107 fraudulent prescriptions. The suspect was re-interviewed and made additional admissions. On June 29, 2011, Altamirano pled guilty to Possession of a Dangerous Drug, a Class 6 Undesignated Felony. The defendant is scheduled to be sentenced on July 6, 2011.

**Janicia Curley:** Caregiver Janicia Curley worked at a Tucson assisted living facility where she had access to the client's financial information. An investigation conducted by the Tucson Police Department and the HCFA determined that Curley had used her access to the client's information to arrange it so that the client's were paying her bills. Curley was charged and pled guilty to Criminal Impersonation, a Class 6 Felony. On March 30, 2011 Curley was sentenced to probation and ordered to pay restitution of \$940.96.

**Linda Armstrong:** The State Grand Jury returned a 4 count indictment against Scottsdale resident Linda Armstrong, an in-home caregiver. Armstrong had been accused of stealing jewelry from the home of her disabled Tempe client and threatening to hit the client if she reported this to anyone. The SIS Special Agent was able to locate pawn shop records that referenced the jewelry that had been stolen. The suspect was confronted with this information and admitted to taking and pawning the client's jewelry. Armstrong pled guilty to Theft from a Vulnerable Adult, a Class 4 Felony. On June 6, 2011 she was sentenced to 3 years probation and ordered to pay a total of \$6,078.00 in restitution and investigative costs.

**Bonnie Muckerheide:** On July 13, 2010, Registered Nurse Bonnie Muckerheide was sentenced to 3 months in jail, ordered to pay \$1789.00 in restitution and \$1500.00 in investigative costs. Muckerheide had pled guilty to a class 4 felony count of forgery. The investigation, which included the suspect's admissions, revealed that Muckerheide had falsely claimed to have made 16 health care monitoring visits to a patient.

### **TUCSON UNIT (TUC)**

**John David Franklin Jr.:** The John D. Franklin Jr. d.b.a. Hurricane Motors was brought to a close after a 2 year investigation. Franklin operated Hurricane Motors used car lot, which victimized car buyers through their fraudulent financing schemes. The investigation revealed that Franklin stole approximately \$50,000.00 from Hurricane Motors' customers. He also stole \$145,000.00 from Car Financial Services, a motor vehicle finance company. On June 16, 2009, the FRANKLIN's were indicted by a Pima County Grand Jury for fraudulent schemes, theft, illegally conducting an enterprise, and money laundering. On January 25, 2011, the FRANKLIN's accepted a plea offer. Franklin's sentencing is set for July 2011.

**Christy Walker:** Tucson SIS Agents investigated an embezzlement case involving Christy WALKER who was a bookkeeper for a local fence company, Security Fence of AZ, for approximately 5 years. During 2009 thru 2010, WALKER embezzled approximately \$700,000.00 from the company by manipulating the accounts receivable and payable. On June 6, 2011, WALKER was sentenced to a year in the county jail, 7 years probation, and a one million dollar restitution amount.

**Jose Luis Peralta:** Case involves an elaborate home equity stripping scheme which defrauded several victims of their homes and money. The investigation conducted by the Tucson SIS, identified suspect Jose PERALTA d.b.a. Presidio Lending Group indicted and Peralta plead to the fraud charges and was sentenced in November 2010 to 2.5 years in Arizona Department of Corrections.

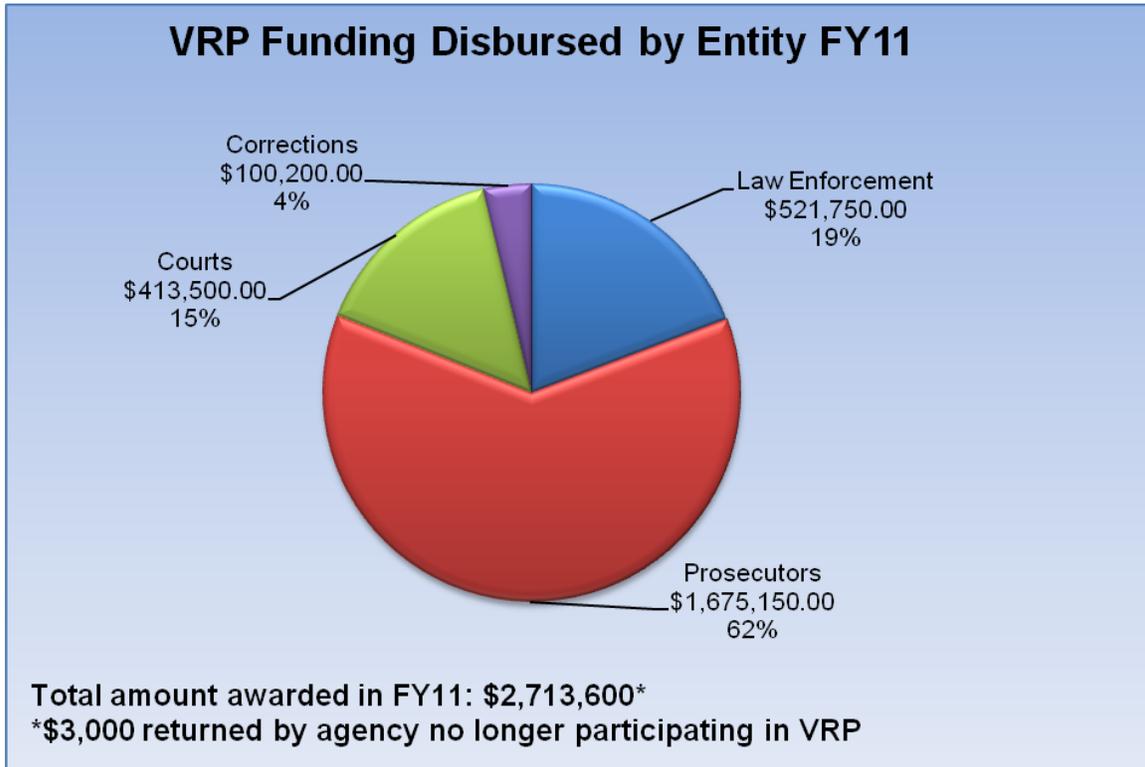
**Sierra Vista Spice:** Agents from BCES partnered with detectives from the Sierra Vista Police Department in a joint marijuana FedEx shipping investigation.

The investigation has led to the seizure of \$239,000.00 in proceeds that were generated by this organization via shipments of marijuana to east coast cities. The case is pending forfeiture of the money.

**Office of Victim Services**

Professional: 10  
 Staff: 2

The Office of Victim Services' (OVS) mission 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 Attorney General's Office. In addition, OVS provides financial and technical support to state, county and municipal law enforcement, custodial, prosecutorial, correctional agencies, and courts, both adult and juvenile, having duties and responsibilities established by Arizona's victims' rights laws.



**Major Cases**

**State v. Brent Emerson et al.:** Although the four defendants were sentenced in 2009, the case was sent to a receivership (Warfield CPA) to determine restitution. Defendant Brent Emerson was sentenced to 2.5 years in prison followed by probation, and his assets were seized and sold by Warfield. The distribution of monies from that seizure was completed in February 2010. The victims received very little reimbursement since there are 446 victims ordered

restitution in the amount of \$2,385,909.19. Defendant Anthony White, sentenced to probation, was not ordered to pay restitution in the original sentencing minute entry and the Assistant Attorney General is working with the defense to correct this mistake. Defendant Gary Murdie was ordered to pay \$100,000.00 in restitution while on probation. As part of the OVS restitution monitoring program inquiries were made with the probation department as to why he was not paying; as a result he is now appearing in front of Restitution Court for being non-compliant. Many victims who lost contact with our office over the years continue to come forward to claim restitution, and the advocate persists in gathering documentation and amending the restitution order through the Court. This has been a complex case with a lot of victim interaction and involvement and although the victims saw a small payout of restitution early this year, many have had a hard time grasping the realities of the restitution process.

**State v. Gerald Patchen:** Patchen was involved in securities fraud in which he solicited fraudulent promissory notes intended to be used in mortgage loans. He was not a registered securities dealer and failed to inform investors that he had at least three previous civil suits filed against him. He defrauded roughly 45 victims through a website and flyers, in which he claimed to be a loan officer. The total amount of money obtained through this fraud was \$889,425.00. A plea offer was extended, but was rejected following a Settlement Conference on February 25, 2011. A trial date is tentatively set for January 9, 2012. Many of the victims in this case are still coming to terms with the fact that he is being charged with a crime, as many of them developed friendships with the defendant and are dealing with the loss of money and sense of betrayal.

**State v. Richard Bible:** In 1988, the defendant raped and killed a 9 year-old girl in Flagstaff, AZ while she was on vacation with her family. Her decomposing, naked body was found three weeks after she went missing, with her hands tied behind her back with a shoelace from one of her shoes. The defendant spent more than 20 years on death row before he was executed on June 30, 2011. Advocate contact with the family increased in frequency as soon after the Warrant of Execution was filed in March of 2011. In the subsequent months, the advocate had numerous conversations with the victim's mother regarding numerous last-minute appeals. They spoke about how she was doing, feeling, the rest of her family, and what to expect as the execution date got closer. The Board of Executive Clemency scheduled a Clemency hearing three days prior to the execution date. The victim advocates from the Department of Corrections were also working with the family and assisted them during the hearing. Even though the advocate was not required to go, the mother expressed her desire to meet her. The advocate drove to Phoenix and met members of the family.

**State v. Derek Chappell:** Derek Chappell was convicted and sentenced to death for the murder of his girlfriend's two year-old son. Although the capital appeal file has been open for a few years, the current fiscal year introduced a new request from the victim, the child's mother. The victim contacted me regarding her laptop computer, taken by the case detective as evidence and not

returned, because it contained digital pictures of her son from infancy to just before his death. Understandably the victim was very interested in getting the pictures; she waited patiently through the trial and the direct appeal but felt there was no perfect time to ask.

The advocate contacted the Maricopa County Attorney's Office and spoke with the prosecutor who doubted defense counsel would agree to release the laptop, even though it had not been introduced at trial, and indicated the original case detective had left the police department. The prosecutor ended the conversation with the suggestion that if the advocate determined if the lab still had the laptop and would be able and willing to copy the files, she would help in anyway necessary to facilitate getting the pictures to the mother. The advocate spent time talking with members of the police department, including the current homicide unit supervisor, an evidence technician, and a property & evidence technician. Ultimately, with a written request from the prosecutor the crime lab agreed to burn all the pictures on the hard drive to a CD. The victim was extremely grateful at the effort to obtain the pictures and expressed her emotional and heartfelt gratitude when she received the disc.

The Section's duties also provide enforcement of victims' rights laws and resolution of victims' complaints. In addition to these specific goals and objectives, the office participates in a wide range of collaborative efforts to provide leadership and increase awareness of the issues faced by crime victims.

## **II. Division Highlights**

- FY10-11 Budget: \$8,143,930.00

- Mission:

To protect the citizens of Arizona by successfully investigating and aggressively and fairly prosecuting criminal cases within the State of Arizona.

To promote and facilitate safety, justice, healing and restitution for all of Arizona's crime victims.

To continue to effectively represent the State in capital and non-capital appeals filed by convicted felons.

The mission is to investigate and prosecute Medicaid fraud; fraud in the Medicaid program; and abuse, neglect and exploitation committed in Medicaid facilities or by Medicaid providers.

- Positive Impacts on the State Budget or the People of Arizona:

The Criminal Division of the State has had an impact on the people of Arizona by prosecuting a multitude of cases involving various types of crimes. The Criminal Division is also committed to providing numerous services for the victims of these crimes.

Death Penalty Cases Opened	130
Death Sentencings Carried Out	4
Drug Cases Opened	490
Drug Cases Resolved	210
Forfeiture Cases Opened	1355
Forfeiture Cases Resolved	376
Fraud Cases Opened	925
Fraud Cases Resolved	378
Restitution Ordered to Victims	\$22,348,797.00
Amount Forfeited to the State	\$ 9,349,073.00
Number of Victims Served	7125
Number of Victim Trainings and Presentations	63
Number of Attendees at Trainings/Presentations	1300
Law Enforcement Assists	1874
Law Enforcement Training Presentations	55
Duty Agent Contacts	1821



**ADOC Inmate 261486  
A YUNYEH**

**Former Medical Doctor Albert  
Yeh**



Defendant: Albert Szu Sun Yeh, M.D.

Disp every 4-6 hrs

Prescription for G.G.

60 Tabs

- Carina took 8 pills for crystals
- Ken, Zero off top
- Aaron, Zero off top

52 pills remain

	Carina	Ken	Aaron
11-26 Saturday	1 pill, noon	-	5 pills, noon
12-29 Saturday	1 pill, 5pm	3 pills, 5pm	2 pills, 5pm
	1 pill, 8pm	2 pills, 8pm	3 pills, 8pm

The above photograph was taken at the time of the search warrant. This document was created by the defendants to keep track of how they distributed their illegally obtained pills.



The victim in the Carol Acha-Morfaw case, photographed above with the SIS Special Agent who conducted the investigation, recently spoke at an Attorney General public program designed to increase the awareness of vulnerable adult crimes in our communities.



**Amelia Duchon-Voyles**  
Someone Worth Accepting Now (SWAN)  
Leadership Award



**Allie Bones**  
On behalf of the Arizona Coalition Against Domestic Violence  
Public Policy Award



**Cheryl Oliver**  
The Compassionate Friends-Verde Chapter  
Innovative Practices



**Commander (Mr.) Kim Humphrey**  
Maricopa Association of Governments Regional Domestic Violence Council  
Service Coordination Award



**Officer Tomas Salviejo**  
Yuma Police Department/Woodard Jr. High School  
Leadership Award



**TOM HORNE**  
ATTORNEY GENERAL

**OFFICE OF THE ARIZONA ATTORNEY GENERAL**  
**EXECUTIVE OFFICES**

**DAVE COLE**  
SOLICITOR GENERAL

**ATTORNEY GENERAL FY2011 ANNUAL REPORT**

**APPENDIX H**

**Mission Statement:**

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

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

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

**I. Major Accomplishments in Fiscal Year 2010**

**A Significant Year for Arizona in the Appellate Courts:**

**United States Supreme Court Practice**

In fiscal year 2010, Arizona was a party in three civil cases that the United States Supreme Court accepted for review and filed *amicus curiae* (“friend of the court”) briefs in another civil case that the Court accepted for review. In *Arizona Christian School Tuition Organization v. Winn*, the Supreme Court vacated a Ninth Circuit decision holding that the plaintiffs had a viable claim that Arizona’s tuition tax credit violated the Establishment Clause. The Supreme Court held that plaintiffs-taxpayers did not have standing to bring an Establishment Clause challenge in federal court, which disposed of the ten-year-old lawsuit. In *Chamber of Commerce v. Whiting*, the Supreme Court affirmed the Ninth Circuit’s decision holding that federal law did not preempt Arizona’s Employers’ Sanction Law. In *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, the Supreme Court held that a portion of the Arizona Citizens Clean Elections Act violated the First Amendment. It held that the provision that provided funds to publicly financed candidates to match the funds raised by privately financed candidates substantially burdened political speech and was not justified by a compelling state interest. In *Camretta v. Greene*, Arizona filed an *amici curiae* brief on behalf of itself and 40 other states to emphasize the importance of the states’ interest in encouraging child welfare agencies and law enforcement departments to cooperate in investigating and prosecuting child abuse by allowing them to interview suspected victims of child abuse in a safe environment without first obtaining parental consent or a warrant. Although the Court did not reach the question presented on the merits, it vacated a very troubling Ninth Circuit opinion.

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

In addition to deciding many cases involving Arizona and its agencies and employees, the Court of Appeals for the Ninth Circuit agreed to review en banc a panel’s decision holding that federal law preempted an Arizona law. In *Gonzalez v. State*, two judges of a three-judge panel upheld Arizona’s requirement that voters show identification at voting polling places but held that federal law preempted Arizona’s requirement that persons who register to vote must provide proof of their citizenship. The en banc court granted review to determine if the panel correctly decided that federal law preempted Arizona’s requirement.

### **Arizona Appellate Court Practice**

The Arizona Supreme Court granted review in *Estate of Braden v. State*, in which the court of appeals had reversed the trial court’s grant of summary judgment in favor of the Department of Economic Security’s Developmental Disabilities Division (“DDD”) on the estate’s claim for abuse or neglect under the Adult Protective Services Act. Jacob Braden was a developmentally disabled adult who died as a result of injuries sustained while he was living in a facility with which the DDD had contracted. The estate claimed that the DDD had maintained Jacob in an unsuitable living arrangement and had committed other negligent acts and omissions.

In *State v. Autozone, Inc.*, which is currently pending before Division One of the Arizona Court of Appeals, the State sued Autozone under the Arizona Consumer Fraud Act (“CFA”) for two types of deceptive pricing practices: displaying merchandise for sale (1) with prices that differed from those charged at the register, and (2) without any posted prices at all. The trial court denied the State’s motion for partial summary judgment on liability and granted Autozone’s cross-motion. The State appealed, arguing that (1) the trial court erred in holding that intent was an element of a deceptive practice claim under the CFA, and (2) sufficient evidence of intent had been presented in any event to establish Autozone’s liability as a matter of law. Autozone cross-appealed, arguing (1) that the penalties that the State was seeking under the CFA impermissibly duplicated those that Autozone had already paid to the Department of Weights and Measures under Arizona’s Pricing Statute, A.R.S. § 41-2051, for the same conduct and (2) that although the CFA permitted the trial court to award recovery to any “person” who had suffered a loss because of deceptive pricing practices, the State had not identified any consumer who had suffered such a loss, the State itself was not “a person” within the meaning of the Act, and the trial court could not require Autozone to pay any restitution to the State or to disgorge any of its profits to the State in the exercise of its equitable powers.

### **Defending Arizona’s Election Laws**

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

- **Identification at the Polls and Proof of Citizenship.** In fiscal year 2008, the State successfully defended the requirements regarding identification at the polls and proof of citizenship when registering to vote. These requirements were part of the Proposition 200 citizens’ initiative approved in 2004. In fiscal year 2010, following an adverse opinion from the Ninth Circuit Court of Appeals reversing the district court’s decision in part, attorneys successfully petitioned the court for en banc review. Attorneys then assisted Attorney General Horne as he prepared to argue the matter before an 11-judge panel of the court. Attorney General Horne argued the case in June, and a decision is expected this year.
- **Arizona’s Clean Elections Act.** Attorneys from the Solicitor General’s Office also continued their defense of the matching funds provision of the Arizona Clean Elections Act. Our appeal to the Ninth Circuit Court of Appeals resulted in an order that restored the matching funds provision. We then undertook an unsuccessful defense of the Ninth Circuit’s decision in the U.S. Supreme Court, which issued a narrow 5-4 decision against Arizona. Justice Kagan and the remaining justices dissented.

## **II. Significant Achievements**

**AGO Library and Research Services (LRS).** In fiscal year 2009, the Solicitor General's Office assumed management responsibility for the Office's law library. The library has streamlined procedures for ordering books, increased training opportunities for attorneys and paralegals on legal research skills, and placed an increased emphasis on electronic research tools.

Fiscal year 2010 saw a great deal of activity in LRS. For further information, please see Attachment 1 (Annual Report submitted by LRS Director Joan Dalton on July 30, 2011).

**Attorney General Opinions.** The Solicitor General's Office coordinates the production of Attorney General opinions. In fiscal year 2010, the Attorney General received 19 opinion requests and issued 5 formal opinions. Those opinions addressed topics relating to public benefits, budget reductions to joint technology education districts, qualified providers' written guarantees, acceptance of standing orders in radiology treatments, and the scope of real-estate appraisers' authority.

**Continuing Legal Education.** The Solicitor General's Office, together with the Office's Continuing Legal Education Committee, offers continuing legal education programs to ensure that lawyers have relevant educational opportunities that will fulfill the State Bar's continuing legal education requirement. In fiscal year 2010, we offered 35 continuing legal education programs for a total of 95 CLE hours. The programs covered a wide range of issues, including legal ethics, various aspects of advocacy, electronic filing, and Arizona's attorney discipline system. For additional information, see Attachment 2.

**Appellate Practice.** The Solicitor General's Office continued its work preparing, reviewing, and editing briefs for state and federal appellate courts and coordinating oral argument preparation. In fiscal year 2010, the Solicitor General's Office reviewed more than 368 briefs<sup>1</sup> and coordinated moot court sessions in connection with approximately 22 cases in which AGO attorneys presented oral argument.

**Ethics.** Special Counsel for Ethics and Training lists the following accomplishments for Fiscal Year 2010:

- Provided daily advice office-wide on a variety of ethics issues, including conflict of interest, ex parte communication, attorney-client privilege, conflict

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<sup>1</sup> This figure includes opening, answering, reply, and *amicus* briefs filed in various appellate courts as well petitions (and responses to petitions) for review and petitions (and responses to petitions) for special action.

waiver, screening for conflicts, joint representation, political activities, unauthorized practice of law, sanctions, and bar complaints.

- Developed a PowerPoint presentation and, with the assistance of other AG lawyers, conducted Public Service Orientation Training for newly elected statewide officials and agency heads.
- Revised the Public Service Orientation Guidebook.
- Provided training to EXO personnel on appropriate communications with the public and media.
- Provided ethics trainings for new attorneys in Protective Services Section.
- Presented a program on ex parte communication in the administrative law context at the 2011 State Bar Convention.
- Developed guidance on ex parte communication in the administrative law context. (We plan to post this information on LinkAG for ready reference.)

**Agency Handbook.** SGO personnel, with assistance from other divisions within AGO, are presently involved in a major revision of the Agency Handbook. Such revisions, which are required every ten years, necessitate painstaking review of legislative enactments that have taken effect since the most recent revision.

**OMLET.** The Solicitor General's Office oversees the Office's Open Meeting Law Enforcement Team (OMLET). OMLET consists of attorneys from every division in AGO and focuses on investigating and enforcing the state's open meeting laws. Currently, the team consists of 20 members. In the last year, the team received 56 new complaints and resolved 58 open cases. Presently, there are 62 open investigations. Team members investigate complaints of open meeting law violations from members of the public and work with the public bodies involved to bring them into compliance with the law. The investigative process involves corresponding with attorneys and members of the public body and, if necessary, conducting depositions of witnesses. In some cases, the team must commence enforcement actions in superior court to bring a public body into compliance with the law.

**Independent Advice.** The Solicitor General's Office provides independent legal advice to state agencies, boards, and commissions as they conduct formal administrative hearings. The independent advisor provides advice on procedural and evidentiary issues during the hearing and assists the agency in preparing any necessary orders resulting from the hearing. This process protects the

independence of the agency decision maker by ensuring that legal advice is available from a neutral attorney when needed. Independent advice is available to any state agency upon request when its regularly assigned assistant attorney general appears before it in a formal administrative hearing. Currently, the independent advisor appears at fifteen to twenty board meetings per month and advises numerous other agencies as requested. Clients include the Arizona Medical Board, the Arizona Board of Nursing, and the Arizona Board of Accountancy.

## ATTACHMENT 1

### **AGO Library & Research Services:**

AGO library patrons (AGO attorneys and paralegals) visited, emailed, or telephoned the AGO library more than 1700 times between July 1, 2010 and June 30, 2011.<sup>2</sup> Of these interactions, 44 percent occurred as in-person visits to the library; 21 percent of this time library patrons accessed the library by telephone; and 34 percent of the time library patrons accessed the library by email. Assistance was requested from the AGO librarian 67 percent of the time that an interaction occurred and the requests ranged from Westlaw password activations/deactivations to complex research assistance requests. These figures project library usage by patrons to be approximately 7 interactions per day with approximately 3 of those daily interactions comprising requests for assistance. Requests come in from employees all over the state. Same day resolution of requests for assistance is the goal and with the exception of intricate research projects, this goal was attained in most cases.

In addition to the troubleshooting and research assistance depicted above, the AGO Library is responsible for preparing procurement requests for ordering AGO Library print materials and renewing subscriptions, and for keeping library materials updated and within budget. While the AGO librarian prepared purchase order requests, library legal resource material updating occurred by utilizing a part-time volunteer. Due to a careful analysis of library print materials ordered in relation to library materials available on-line, the AGO librarian was able to reduce spending on print materials by about 34 percent during this fiscal year.

The Westlaw contract was renegotiated during this fiscal year, and the Law Librarian, along with Procurement Officer Jerry Connelly and the Solicitor General, were not only able to eliminate the requirement of having to order a specific number of print materials in order to get a reduced Westlaw monthly flat rate, but were also able to negotiate a significant reduction in the monthly flat rate.

The AGO library coordinates monthly Westlaw training for AGO employees statewide by announcing the upcoming training, securing a training room if needed, registering training participants and keeping records of the trainings provided. Additionally, the AGO librarian developed training for paralegals and attorneys and delivered the training during FY10. The trainings consisted of Fundamentals of Legal Research training for Paralegals and Arizona On-Line

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<sup>2</sup> This metric was calculated based on AGO library patronage data that was collected for 197 of a possible 260 days (or 75% of the days available for collection). Data was not collected when the AGO librarian was not in the Office, or on days when the sheer volume of library work did not allow for the collection of data.

Legislative History trainings (for both paralegals and attorneys.). The AGO librarian travelled to Tucson last July to deliver the training to attorneys and paralegals in that Office. The AGO librarian also gave presentations to Office interns, paralegals, and specific sections on the resources that are available via the AGO library. Similarly, the AGO Librarian kept AGO attorneys and paralegals informed of important research information via email.

The AGO Library must also perform some accounting functions such as activating and deactivating Westlaw passwords while providing a detailed inventory of active passwords to AGO Accounting, and accounting for library inventory that has and has not been checked out. Since January 2011 a part-time LRS employee has taken on these functions and is also beginning to take on some of the accounting tasks in relation to ordering library materials. The part-time employee also covers for the library in the librarian's absence and carries out general maintenance projects.

During FY10, the AGO librarian, with the assistance of a summer intern, began uploading Arizona House of Representatives legislative history documents to linkAG. Interns also inspected AGO library links on linkAG for link rot. The AGO librarian compiled and uploaded compiled legislative histories to linkAG upon request and maintained the vast amount of linkAG library page resources.

Finally, the AGO Librarian began assisting the AGO Community Services Section with the writing of grant proposals and wrote the narrative for an Arizona Identity Theft Coalition grant proposal during this time period.

ATTACHMENT 2

Date	Title of Presentation	Ethics	CLE	Attendees Phoenix	Attendees Tucson	Total Attendees	Total CLE Hours	Value
08/26/10	Ethics for PSS Attorneys	2	2	6	0	6	12	\$ 468.00
09/17/10	Oral Advocacy Training		1.5	12		12	18	\$ 702.00
09/24/10	Agreements Between the Navajo Nation and State Agencies		1.5	42	2	44	66	\$ 2,574.00
10/04/10	Google, Twitter & What It's Worth: Presenting Cases & Damages to Today's Juries		2	58	9	67	134	\$ 5,226.00
10/08/10	Ethical Considerations for Public Lawyers	2	2	102	14	116	232	\$ 9,048.00
11/08/10	Innocent Until Interrogates: The Story of the Buddhist Temple Massacre & the Tucson Four	0.5	2	41	0	41	82	\$ 3,198.00
11/16/10	Changes to Arizona's Attorney Discipline System: What to Expect in 2011	1.5	1.5	77	9	86	129	\$ 5,031.00
11/18/10	Americans With Disabilities Act Overview		2	50	*	50	100	\$ 3,900.00
12/01/10	Garriott v. Winn US Supreme Court Argument		1	33	8	41	41	\$ 1,599.00

Date	Title of Presentation	Ethics	CLE	Attendees Phoenix	Attendees Tucson	Total Attendees	Total CLE Hours	Value
12/13/10	Arizona's Employer Sanctions Law: US Supreme Court Argument		1	52	5	57	57	\$ 2,223.00
12/14/10	Articulate Advocate II: Advanced Communication Techniques for Trial & Appellate Lawyers		2	76	13	89	178	\$ 6,942.00
12/16/10	AZTurbo Court: Mandatory E-Filing in the Superior Court in Maricopa County		1.5	81	7	88	132	\$ 5,148.00
01/10/11	Ethical and Appropriate Communications With the Media and the Public	1.5	1.5	6		6	9	\$ 351.00
02/16/11	E-Filing in the Court of Appeals		1.5	46	8	54	81	\$ 3,159.00
02/17/11	Ethics for PSS Attorneys	2	2	6	0	6	12	\$ 468.00
03/11/11	Making and Overcoming Objections		2	89	20	109	218	\$ 8,502.00
03/18/11	The Lincoln Lawyer	1	1.5	15	0	15	22.5	\$ 877.50
03/23/11	Winning Witness Preparation		2	75	*	8	166	\$ 6,474.00
04/04/11	After the Arguments: Arizona's Clean Elections Law at the US Supreme Court		1	50	*	5	55	\$ 2,145.00
04/08/11	Everything You Need to Know About Taking an Effective Deposition	0.5	3	82	9	91	273	\$ 10,647.00
04/08/11	Public Service Orientation	2	2	21	0	21	42	\$ 1,638.00
04/12/11	Bones in the Desert: The True Story of a Mother's Murder & a Daughter's Search		1.5	19	5	24	36	\$ 1,404.00

Date	Title of Presentation	Ethics	CLE	Attendees Phoenix	Attendees Tucson	Total Attendees	Total CLE Hours	Value
04/13/11	(Sometimes) A Picture is Worth a Thousand Words - the Keys to Selection & Use of Exhibits	0.5	3	83	2	85	255	\$ 9,945.00
04/19/11	Logical Fallacies	0.5	2	30	9	39	78	\$ 3,042.00
04/28/11	NAGTRI Negotiations Training		7	33	0	33	231	\$ 9,009.00
05/02/11	Top Ten Ethics Tips for Government Lawyers	3	3	99	6	105	315	\$ 12,285.00
05/05/11	Social Media & Government Entities	1	2.5	52	0	52	130	\$ 5,070.00
05/10/11	Vanquishing Vampires - or - How to Handle Obnoxious Opposing Counsel	1	2	89	5	94	188	\$ 7,332.00
05/16/11	Miranda: The Story of America's Right to Remain Silent	0.5	1.5	27	7	34	51	\$ 1,989.00
05/19/11	Lunch & Learn-Developing Your Case Theory and Theme		1	26	4	30	30	\$ 1,170.00
06/02/11	Ethics at the Movies 2011	3	3	77	7	84	252	\$ 9,828.00
06/23/11	The Challenges of Maintaining Professional Autonomy While Working in a Hierarchy: Obedience & the Professional Practice of Law	0.5	1	40	8	48	48	\$ 1,872.00
06/28/11	Discovery in the Age of Electronically Stored Information	1	3	56	7	63	189	\$ 7,371.00

Date	Title of Presentation	Ethics	CLE	Attendees Phoenix	Attendees Tucson	Total Attendees	Total CLE Hours	Value
06/29/11	US Supreme Court Review: Highlights of the 2010-11 Term		2	41	0	41	82	\$ 3,198.00
06/30/11	Irving Younger's Ten Commandments of Cross-Examination		2	49	8	57	114	\$ 4,446.00
		24	71	1741	185	1926		
								<b>\$158,281.50</b>

\*Estimate/Missing Sign-In Sheets



**TOM HORNE**  
ATTORNEY GENERAL

**OFFICE OF THE ARIZONA ATTORNEY GENERAL**  
**AGENCY COUNSEL AND CIVIL RIGHTS DIVISION**

**MELANIE PATE**  
DIVISION CHIEF COUNSEL

**ATTORNEY GENERAL FY2011 ANNUAL REPORT**

**APPENDIX I**

**Division Summary:**

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

- The **Civil Rights Compliance Section** investigated 1462 discrimination charges and resolved 948 cases in FY 2011, including 164 housing charges, 702 employment charges and 83 public accommodations charges. The Section also issued 22 determinations in cases where the Division found reasonable cause to believe that unlawful discrimination had occurred. Many of these cases were successfully conciliated before litigation became necessary.

- The **Civil Rights Litigation Section** resolved 92 charges of discrimination either through mediation, conciliation or litigation and performed work on hundreds of other charges filed with the Division. As a result of these efforts, the Litigation Section obtained a total of \$1,939,929.00 in monetary relief for Charging Parties and for future monitoring and enforcement activities, along with a wide variety of injunctive relief to prevent future civil rights violations.

- The **Agency Counsel Section** represents approximately 70 State agencies in matters concerning public monies, procurement, finance, open meetings, public records, general agency advice and related litigation. Clients include the State and appellate judiciary (and its associated programs), including adult and juvenile probation, Secretary of State, Department of Administration, Department of Corrections, Department of Emergency and Military Affairs, Department of Homeland Security, Department of Housing, Department of Gaming, Administrative Offices of the Courts,

Arizona Exposition and State Fair, the State Retirement System and the State Lottery, to name a few.

The **Civil Rights Conflict Resolution Program** mediated 110 civil rights matters and facilitated 53 agreements, which is a 52% settlement rate. As a result of the Conflict Resolution Program's efforts, Charging Parties received a total of \$364,846.00 in monetary relief and also obtained significant injunctive relief to assist the parties in finding common ground to resolve charges of discrimination filed with the Division.

Among the agreements facilitated by the Conflict Resolution Program:

- In an employment matter involving alleged age discrimination, the employer agreed to pay the Charging Party \$47,000.00.
- To resolve a charge of employment discrimination alleging sex discrimination and retaliation, the Respondent agreed to pay the Charging Party \$60,000.00.
- In an employment matter involving allegations of age discrimination, the Respondent agreed to pay the Charging Party \$22,500.00 and to change the terms of the Charging Party's separation from the company from "terminated" to "retired."
- To settle a charge involving alleged race-based predatory lending in violation of the Arizona Fair Housing Act, the Respondent agreed to modify the terms of the Charging Party's home mortgage loan after the Charging Party demonstrated his ability to pay the reduced monthly payment.
- After mediation of a public accommodations charge alleging violations of the Arizonans with Disabilities Act, the Respondent agreed to provide additional training to its staff in the use of Video Remote Interpreting (VRI) equipment and to evaluate its need to acquire additional such equipment.

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

The **Civil Rights Litigation Section** also helped parties resolve 31 charges through conciliation agreements achieved prior to the conclusion of the Division's administrative investigation or after a reasonable cause determination was issued but before a lawsuit was filed. Through these conciliation efforts, the Division obtained a total of \$390,308.00 in monetary relief for the charging parties and for future monitoring and enforcement activities. The conciliation agreements also resulted in substantial non-monetary relief for disabled persons in the form of modifications to places of public accommodation, such as the building of access ramps and retrofitting places of public accommodation to ensure that disabled persons could access the businesses and their services, and requiring policy revisions and training to prevent future civil rights violations in housing and employment.

In one matter in which the Charging Party alleged that Respondent had violated the Arizonans with Disabilities Act by refusing to admit the Charging Party to an occupational therapy assistant program because of her disability, Respondent agreed to pay the Charging Party \$45,000.00, to admit her to the program subject to satisfying certain general requirements, to waive program fees and associated costs, and to provide reasonable accommodations for the Charging Party's disability while she attended the program.

In seeking to enforce housing, employment and public accommodations discrimination laws throughout Arizona, the Litigation Section pursued 19 lawsuits in state and federal trial and appellate courts alleging violations of the Arizona Civil Rights Act, which includes the Arizona Fair Housing Act and the Arizonans with Disabilities Act. Among the highlights of the cases litigated by the Litigation Section this past year:

State v. ASARCO, LLC: Over eight days in April 2011, the Division and the Charging Party tried this sex-based employment discrimination case in U.S. District Court in Tucson. The case involved allegations that ASARCO has a history of ignoring complaints of workplace harassment and failing to address employees' use of pornographic graffiti to humiliate, demean and ostracize co-workers. The jury returned a verdict against ASARCO on the Plaintiffs' sexual harassment claims and awarded the Charging Party \$1.00 in nominal damages and \$868,750.00 in punitive damages. This award exceeded the applicable compensatory damages cap under Title VII of the federal Civil Rights Act by hundreds of thousands of dollars. After post-trial briefing, the District Court reduced the award to the statutory cap of \$300,000.00, and ordered injunctive relief in the form of policy changes and training in state and federal employment discrimination law for ASARCO employees.

State v. NHP Villa, LLP et al.: The Division settled this housing discrimination case against Texas-based Hall Financial Group and related entities, which operated Villatree Apartments in Tempe. The lawsuit alleged the Hall entities discriminated against the Charging Parties because of their race (Arab), national origin (Egyptian) and religion (Muslim) by complicating the application process to discourage them from renting and by inspecting their apartment and their possessions without justification or permission while they were in the process of moving into Villatree. The lawsuit also alleged that when the Charging Parties complained about what they perceived to be discriminatory treatment at Villatree, the property manager initiated eviction proceedings against them. Discovery revealed that the property manager reported the Charging Parties to the FBI the day after they moved into Villatree, alleging that she suspected them of being involved in terrorism. Under the settlement, the Charging Parties received \$197,500.00 in compensation and the Division received \$30,000.00 to enforce civil rights laws in Arizona. This is the largest settlement of a fair housing lawsuit in the Division's history.

State v. Dupnik, et al.: This case of disability-based employment discrimination involves allegations that the Pima County Sheriff's Department refused to grant a 911 call taker's request to use her certified service dog at work as a reasonable accommodation for her mobility disability and retaliated against her for engaging in protected conduct. On April 1, 2011, the U.S. District Court in Tucson denied Defendants' motion for summary judgment on reasonable accommodation and retaliation in a 72-page opinion that upholds the right of a mobility-disabled employee to use a service animal as a reasonable

accommodation and affirms an employer's duty to engage in a good faith effort to find an effective accommodation for a disabled employee without retaliating against the employee. The parties are discussing settlement.

State v. Harkins Administrative Services, Inc., et al.: The Division has continued to litigate this case after it was remanded to the U.S. District Court in Phoenix following a successful appeal to the Ninth Circuit in 2010. The Division filed this lawsuit in 2006, seeking the installation of auxiliary aids and services equipment that would display captions or transmit video description for movie theater patrons with sensory impairments. After the Ninth Circuit remanded the case to the District Court, Harkins filed another motion to dismiss, arguing that the Department of Justice has primary jurisdiction over the issues in the case because of its rulemaking authority related to Title III of the Americans with Disabilities Act. The Department of Justice filed a Statement of Interest in support of the Division's opposition to this motion, which the District Court dismissed. The parties are now actively engaged in litigating the issue of how many theater auditoriums Harkins must equip with the captioning and video description devices.

State v. Town of Colorado City, et al.: This case of housing discrimination alleges that the Defendants discriminated against a Colorado City resident and his family by not providing them with water and other utility services because of the Charging Party's religion and by not accommodating his disability. The Charging Party is a former member of the Fundamentalist Church of Jesus Christ of Latter Day Saints ("FLDS"). In May 2011, the Division and the Charging Party defeated a defense motion to stay the lawsuit pending the outcome of a case that Colorado City filed against the United Effort Plan Trust, which owns the land upon which the Charging Party and his family reside, and are vigorously pursuing discovery.

State v. City of Cottonwood & Cottonwood Police Department: This employment discrimination case involves allegations that the Cottonwood Police Department made passage of a physical fitness test known to have a disparate impact on women a requirement to promote to sergeant in order to prevent the only woman ever to have otherwise qualified to promote from attaining that position. The case is noteworthy because it includes claims for disparate impact as well as disparate treatment discrimination and retaliation relating to Defendants' implementation of the physical fitness test. As such, the case has implications for female police officers other than the Charging Party. The case likely will be ready for trial in early 2012.

State v. Tucson Unified School District: The Division settled this employment discrimination claim of retaliation against TUSD. The lawsuit alleged that TUSD retaliated against an employee when it denied her a transfer to a position she had once held because she had previously filed a charge of age and disability discrimination against it. The Consent Decree, approved by the court, required TUSD to: revise and expand its policies prohibiting retaliation, develop internal protocols to protect individuals who have participated in proceedings under state or federal anti-discrimination laws from retaliation during TUSD hiring and selection procedures, publish its new and revised policies on TUSD's website, pay the employee \$20,000.00, provide the employee with four months of paid administrative leave prior to her retirement date, and pay the Division \$2,000.00 for enforcement of civil rights.

State v. The Geo Group, Inc.: On June 4, 2010, the Division filed this lawsuit against The Geo Group, Inc., which operates the Florence West Prison and Central Arizona Correctional Facilities. The lawsuit alleges that a female correctional officer and a class of similarly situated women were subjected to a sexually hostile work environment by several male supervisory officers, including inappropriate touching, sexual advances, offensive language, and degrading and humiliating treatment that undermined them in the performance of their duties. The lawsuit further alleges that the defendant did not take effective remedial action to prevent the harassment or effective steps to protect female employees after they reported harassment. The U.S. Equal Employment Opportunity Commission adopted the Division's findings from its investigation and also filed a lawsuit. The lawsuits have been consolidated in U.S. District Court. Plaintiffs defeated Defendant's motion to dismiss the class and are pursuing discovery to identify class members.

State v. City of Avondale: The Division filed this fair housing lawsuit against the City of Avondale alleging that it discriminated against a service provider on the basis of disability by failing to accommodate his request to waive a City of Avondale ordinance requiring installation of sprinkler fire suppression systems in all group homes for people with disabilities, and by subjecting the homes he provided for individuals with intellectual disabilities to different terms and conditions than other single family residences. The homes operated by the service provider were licensed by the State of Arizona, which did not require installation of a fire suppression system. The parties are working together to reach a mutually agreeable resolution of this matter.

**Civil Rights Outreach Activities:** In addition to its investigation and enforcement activities, the Division participates in and sponsors numerous education and outreach events to inform the community about civil rights laws and the Division's complaint and resolution process. ACRD staff participated in over 40 of these events during the past year, including the annual Martin Luther King, Jr. Day of Service march and rally in Phoenix. In addition, the Division completed work on a \$60,000 grant from the United States Department of Justice, Office of Special Counsel to conduct an outreach campaign regarding immigration-related unfair employment practices. The campaign included employer seminars, employee workshops, newspaper and radio advertisements, and distribution of educational materials at naturalization ceremonies and citizenship classes.

**Agency Counsel Section (ACS):** Because of the number and type of clients it serves, ACS deals with a wide range of legal issues. ACS lawyers are the State's experts in several areas, including public monies, procurement, contracting and financial issues. ACS' responsibilities include negotiating multi-million dollar contracts, assisting in State bonding issues, providing procurement advice, and assisting agencies with licensing and certification issues. Other tasks include prosecuting enforcement actions and defending claims or actions against the agencies. ACS' successes are measured in its partnerships with the client agencies and the assistance it provides to them in performing their statutory missions in a creative and cost-effective manner, and its ability to deal effectively with litigation matters when they arise.

Examples of the many issues ACS was involved with in FY 2011 include:

- The *Collins v. Brewer* case concerning the definition of “dependent” for the purpose of state health benefits;
- The *Aubuchon v. Maricopa County* case, representing the Superior Court and judges in the appeal of Ms. Aubuchon’s termination;
- Advice to the Commission on Appellate Court Appointments regarding nominations to the Independent Redistricting Commission;
- Successfully moved to quash the garnishment of state funds held by La Paz County;
- Advice to the Department of Corrections concerning issues at the Kingman Private Prison;
- Successfully defended the board in *Turner v. Board of Executive Clemency* against a challenge by an inmate, who had been convicted of multiple sex offenses, to its denial of parole;
- Successfully defended the Board of Executive Clemency against a repeat drunk driver’s challenge to the Board’s denial of a recommendation for commutation of his sentence;
- Advice regarding issues arising from Water Infrastructure Finance Authority Bonds, Low Income Housing Tax Credits and State Film Tax Credits;
- Filed several trademarks and trademark renewals for the Arizona Lottery.