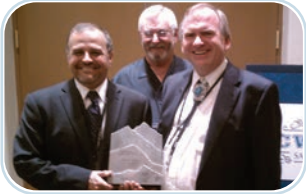


# 2010

## NEW MEXICO ATTORNEY GENERAL'S OFFICE

# ANNUAL REPORT

Conference of Western Attorneys General - Chief Deputy Attorney General Albert J. Lama receives the Nelson Kempsey Award



Methamphetamine Awareness and Prevention "Train-the-Trainer" program trains volunteers in Albuquerque



Attorney General Distributes Lawsuit Money to NM Food Banks



Appeals court upholds murder conviction of Michael Swick - AGO represents the state

AG King Meets With U.S. Secretary of State Clinton to ask for continued support for fight against drugs in Mexico

JULY

AUGUST

SEPTEMBER

OCTOBER

NOVEMBER

DECEMBER

Settlement agreement reached with OppenheimerFunds - OppenheimerFunds agrees to pay to the Education Trust Board more than \$67.3 million



Landmark symposium to teach Mexican lawyers and judges about oral advocacy



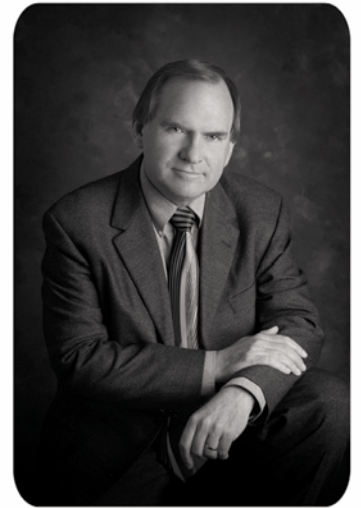
Domestic Violence Awareness Month "Wear Purple" Campaign news conference

Filing of the state's first ever lawsuit against a local man for allegedly providing incorrect and exorbitantly expensive immigration advice to consumers



# MESSAGE FROM ATTORNEY GENERAL GARY K. KING

This annual report to the New Mexico Legislature coincides with the beginning of my second four year term as Attorney General. I am very proud of the wide range of accomplishments produced by my staff in the preceding year and I am looking forward to continuing those successes well into the future. Much of what we do at the Attorney General's Office is in collaboration with many of you as members of the legislative body of state government. Working together as a team has proven to be a great benefit for the citizens of New Mexico in terms of legislation that is formulated and passed into law. You can expect me to continue asking for your help in our efforts to protect New Mexico families.



For the 50th Legislative Session I set a number of key priorities for my office to pursue, including Ethics and Campaign Finance Reforms; DWI and Underage Drinking Prevention; Domestic Violence law improvements; Criminal Law Enforcement initiatives; Consumer Protection proposals; and General Fund increased revenues for the State, including strengthening the Fraud Against Taxpayers Act and Tobacco law amendments to maximize the State's access to full recoveries.

I will also continue efforts to protect New Mexico's natural environment, including water and air quality. Our advocacy on behalf of the State's utility ratepayers will also continue to strive for a good balance between corporate viability and fair rates for consumers.

This year we welcome a new Governor and new members of the Legislature. It is my sincere desire to work with all parties to serve New Mexico citizens in the most productive and professional manner possible.

Once again I am happy to report that the various divisions that make up the Attorney General's Office have been very busy over the past year. The following information should give you and the general public a good idea of what this office does and how it is all accomplished. May 2011 be a great year for New Mexico and for our country.

Sincerely,

A handwritten signature in black ink that reads "Gary K." The signature is written in a cursive, flowing style.

Gary K. King  
New Mexico Attorney General



### **Santa Fe**

Paul Bardacke Attorney General Complex  
408 Galisteo St.  
Santa Fe, NM 87501

Phone: (505) 827-6000  
Fax: (505) 827-5826

### **Albuquerque**

111 Lomas Blvd. NW, Ste 300  
Albuquerque, NM 87102

Phone: (505) 222-9000  
Fax: (505) 222-9006

### **Las Cruces**

201 N. Church St., Ste. 315  
Las Cruces, NM 88001

Phone: (505) 526-2280  
Fax: (505) 526-2415

### **Consumer Toll-Free Hotline**

1-800-678-1508

# TABLE OF CONTENTS

1	Message from Attorney General Gary K. King
4	Report from the Executive Office
8	Communications Division
10	Information & Technology Division
11	Administrative Services Division
12	Border Violence Division
15	Civil Division
17	Consumer Protection Division
19	Criminal Appeals Division
21	Government Accountability Division
22	Investigations Division
23	Litigation Division
26	Medicaid Fraud & Elder Abuse Division
28	Prosecutions Division
29	Water, Environment, & Utilities Division

REPORT FROM  
THE EXECUTIVE OFFICE

# CHIEF DEPUTY ATTORNEY GENERAL

ALBERT J. LAMA

This annual report documents some examples of how the Attorney General and his staff of professionals accomplished the duties of the office in 2010. We continue to appreciate the support that Legislators have provided throughout the years and we ask for your continued support in 2011.



As Chief Deputy, I am committed to our role and responsibility as the State's Attorney and I expect us to continue to carry out our mission to the best of our abilities on behalf of the citizens of the State of New Mexico. In looking ahead to 2011, our plate is full of challenges and opportunities to advance the best interests of our clients and the public. I am pleased that Attorney General King recently appointed Elizabeth Glenn as Deputy Attorney General. With 20 years of experience as an Assistant Attorney General, Elizabeth brings a wealth of experience to the executive office that I know will prove to be invaluable to the agency and to our clients. There is no doubt that the challenges before us are significant and our resources are limited. Nevertheless, these circumstances will not change our resolve to provide high quality legal representation to our client, the State of New Mexico. As before, the Attorney General will continue to hold individuals accountable when they act illegally or otherwise violate the public trust and will pursue efforts to support the enactment and enforcement of laws that protect the interests of our state, its people and its resources.

Recognizing that political rhetoric will not satisfy our obligations as lawyers and as officers of the Judiciary, I am confident that the Attorney General's Office will continue to exercise our role with commitment to do the right thing; to ensure that our elected and appointed officials continue to receive the best legal advice available to assist them in making wise and effective decisions on behalf of all New Mexicans.

# CHIEF OF STAFF

MICHELLE GARCIA

Chief of Staff Michelle Garcia assists in the development of policies for the agency and provides direction to the divisions within the agency to implement those policies. She directs the multi-disciplinary staff in accomplishing the goals and objectives of the Attorney General through supporting activities and participation in projects and programs initiated at the request of Attorney General King. Chief of Staff Garcia enhances staff development through interaction with employees within the agency, assisting in interviews with personnel applicants and developing staff training programs within the agency as well as training for law enforcement. She also represents the Attorney General on several law enforcement boards.



As a law enforcement officer, Chief of Staff Garcia brings a wealth of knowledge and experience to her duties as liaison to the state's law enforcement community. She serves as a representative on the Anti-Terrorism Advisory Council (ATAC), the High Intensity Drug Trafficking Area (HIDTA), Child Fatality Review Panel and the New Mexico Intimate Partner Violence Death Review Team.

Among the Attorney General's priorities for 2010 was the continuation of his Anti-Methamphetamine Initiative,



focusing on a federal grant that enables the Attorney General's Office to broaden the efforts of the program through the Train-the-Trainer Project. Other projects include the Teen Dating Violence Awareness Project, designed to show teenagers the warning signs and dangers of dating violence. The project educates teens on appropriate dating, and how to respond to a violent relationship. Chief of Staff Garcia also chairs the Prescription Drug Disposal project task force. The project is designed for youth, parents and the elderly to help them understand safe ways to dispose of any unused or unwanted prescription medications; this in turn will protect our youth and our environment. The AGO's outreach and education design will help take all of these programs across the state of New Mexico.

Ms. Garcia will continue to develop and support the priorities of Attorney General King in 2011.

## LEGISLATIVE TEAM

The Attorney General's Legislative Team continues to advance the legislative agenda directed by AG Gary King.

Legislation successfully promoted by the Attorney General during the 2010 Session included the Whistleblower Protection Act, the Mortgage Foreclosure Consultant Fraud Act, and the Resident or Care Provider In-Home Abuse Act.

For the 2011 Legislative Session, Attorney General King has set a number of key priorities, including:

- Ethics and Campaign Finance Reforms, focusing on enhanced campaign practice and government contractor disclosures, and extending the State's main Ethics laws to all local governments;
- DWI and Underage Drinking Prevention, including increased funding for alcohol and substance abuse;
- Domestic Violence law improvements, especially to protect victims;
- Criminal Law Enforcement initiatives, including Border Violence and drug enforcement issues;
- Consumer Protection proposals, such as a Usury cap on small loans and mortgage foreclosure practice reforms to protect innocent homeowners; and
- General Fund increased revenues for the State, including strengthening the Fraud Against Taxpayers Act and Tobacco law amendments to maximize the State's access to full recoveries.

STUART BLUESTONE

PHILLIP BACA

VICTORIA BRANSFORD





# CONSTITUENT SERVICES

## CORDY MEDINA

Attorney General King's Constituent Services Coordinator attempts to resolve issues and problems reported to the Office by the general public. Cordy Medina fields between 15 and 20 cases per week, providing personal attention to hundreds of people who have found no other source of help for their particular type of problem or issue.

These important issues are reported to Ms. Medina by mail, email, phone, or in person. Sometimes the reported problems are of a legal nature requiring them to be routed to the appropriate staff within the Attorney General's Office. Other constituent complaints are often handled by collaborating with other state agencies to find solutions. Throughout the year Ms. Medina travels across New Mexico to meet with individuals, groups, or organizations that need help from state government.

Attorney General King established this position in the office in order to help people who might be having a hard time navigating the sometimes intimidating bureaucracy of government. Judging by the hundreds of letters, phone calls, and emails received by her office, Cordy Medina has become the "go to" person not only within the Attorney General's Office but for other state government agencies as well.





# COMMUNICATIONS DIVISION

DIRECTOR PHILLIP SISNEROS

## VISION

The Communications Division maintains the public interface with the Attorney General's Office. News releases, media advisories, publications, and education & outreach are all part of the division's daily responsibilities. Communications staff are also responsible for content on the AG's Web site and work together with the IT Division to regularly update and add new Internet-based services to the general public. The division's goal is to consistently and accurately serve as the conduit by which important information from the AGO is passed on to the public.

## YEAR IN REVIEW

The development and execution of the next phase of Attorney General King's Methamphetamine Initiative stands out as a major accomplishment for the Communications Division for 2010. Utilizing funding from the U.S. Department of Justice, the Train the Trainer project was successfully launched in communities across New Mexico. The project coordinator was tasked with developing a new instructive meth presentation designed specifically for volunteer trainers who are now taking the information and teaching members of their home communities about the dangers of methamphetamine abuse. The idea behind the third expansion of the AG's Meth Initiative is to empower local communities with the ability and expertise to spread the knowledge and information garnered by the Attorney General's Office by using their own presenters who can adapt the base AGO presentation to meet specific needs in those communities. The project launch was prefaced by a statewide media campaign that invited

interested community activists to get trained to battle the methamphetamine epidemic by the AG's Office. Response has been wildly successful and the Train the Trainer project is now in full swing in cities, towns, and villages all over New Mexico. Meanwhile, the AGO's original anti-meth presentation has continued and will be available on a limited basis in the coming year.



The division helped organize and publicize seven AGO Road Shows around the state in 2010. Nearly six hundred state, county, and municipal government employees and others attended the "Sunshine Law" seminars presented by the AGO Civil Division attorneys.

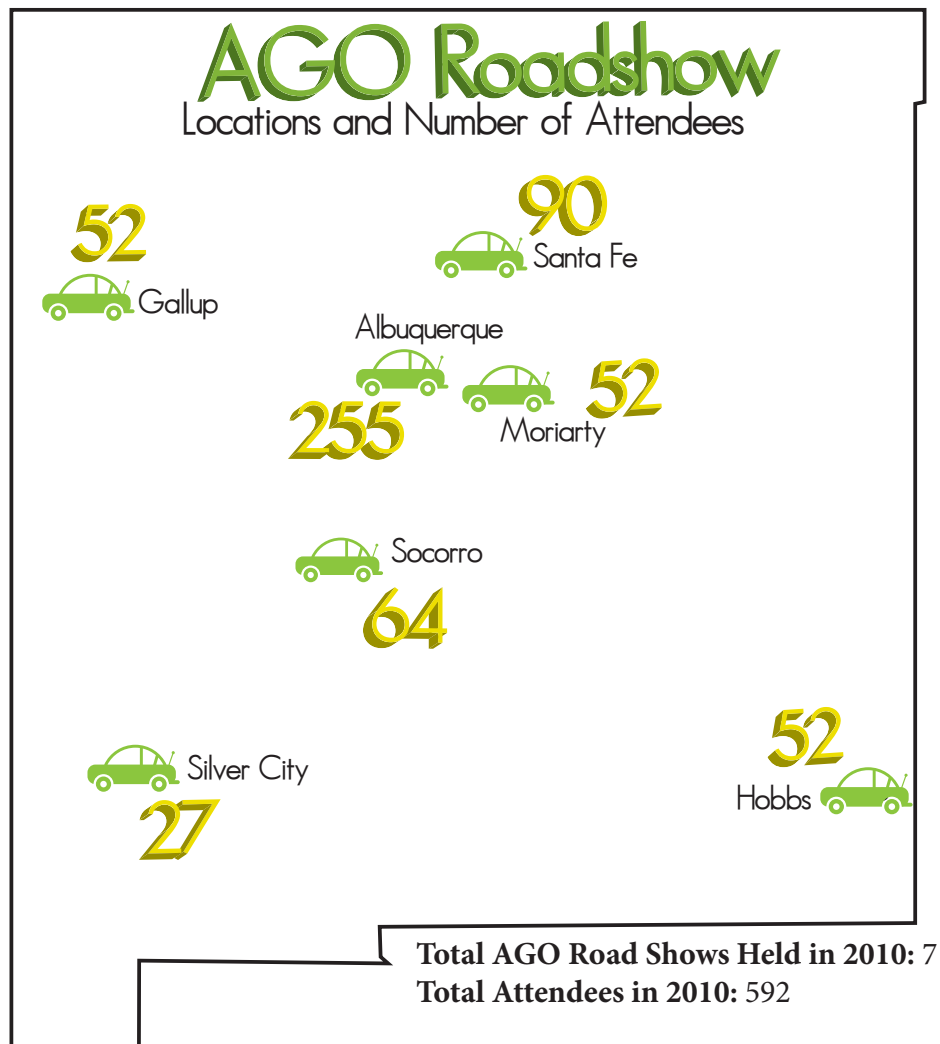
Communications Division staff, working with Border Violence Division staff, have completed a comprehensive manual dealing with Human Trafficking case investigations and prosecutions. The manual will be distributed statewide to law enforcement entities early in 2011. Staffers also collaborated to produce an anti-human trafficking media campaign using federal grant funding to expand awareness and education about the human trafficking trade in New Mexico.

## LOOKING AHEAD



Depending upon budget and resources the Attorney General's Road Show will continue to visit communities across New Mexico, presenting seminars on the state's "Sunshine Laws" and other AGO presentations designed to inform and protect consumers and other citizens.

# AGO Outraeach and Education in 2010



## Public Presentations by Communications Division Staff

**Subject:** Anti-Methamphetamine for Parents & School-age Children

**Events:** 43

**Attendance:** 7,981

**Subject:** Anti-Meth Train the Trainer Project

**Events:** 4

**Attendance:** 162

**Subject:** Internet Safety/Cyberbullying

**Events:** 20

**Attendance:** 4,026

### Updated and New Presentations:

Meth for Teens and Parents

Internet Safety

Scams and Identity Theft

Cyberbullying



# INFORMATION AND TECHNOLOGY DIVISION

DIRECTOR JAMES FERREIRA

## VISION

The Attorney General's Office (AGO) Information and Technology Division (IT) provides data technology services for the staff of the AGO. In its staff support role, IT is continually seeking technical advances while maintaining lower costs to provide service. The AGO has adopted several very efficient systems that have allowed IT to reduce its operating budget yet provide greatly enhanced services.

## YEAR IN REVIEW

AGO email, documents, and calendaring systems have had 100%, around the clock availability for the past two years. IT is redefining disaster recovery. For example, the agency's Recovery Point Objective (RPO) design target is zero data loss and the Recovery Time Objective (RTO) design target is instant failover for no loss of production. This means that the AGO never loses its ability to meet its mission.

The AGO staff can set up anywhere that Internet is available and immediately return to work, meaning the AGO can sustain a statewide disaster. Backing this system are portable systems that allow continuity of data in the event of a national disaster. We have battle tested our systems and there have been NO failures, NO data loss, NO security breaches and NO loss of productive time.

## LOOKING AHEAD

The coming year will mark a distinctive shift in the direction of the Attorney General's Office IT infrastructure as information is moved to the cloud. The old 'server-desktop fat client' scenario has

simply become inefficient, expensive and unsecured when compared to cloud technologies. Our Google Apps Government edition email and document management systems are certified by the rigorous Federal Information Systems Management Act (FISMA) and exceed all state of New Mexico security standards. We employ "point to point" and "at rest" encryption of data and annual audits of our firewalls and internal networks ensure that there are no penetration points. Email archiving and the ability to classify email by category allow the AGO to easily meet NMAC and IPRA standards.

Going into FY12 the AGO continues to save taxpayer money through innovation. Following our modal statewide would not only increase the security of the state's data but also save more than \$10 million annually.



# ADMINISTRATIVE SERVICES DIVISION

## DIRECTOR EVANGELINE TINAJERO

### VISION

The Administrative Services Division serves the entire Attorney General's Office and facilitates its fiscal operation within the parameters of the budget established and appropriated by the Legislature. The division also provides Human Resources Management and services for the AGO. The Administrative Services Division is responsible for managing the finances and purchasing functions of the Attorney General's Office in order for it to function properly and provide the public and the State of New Mexico with its statutorily directed duties and responsibilities.

### YEAR IN REVIEW

2010 was a challenging year in terms of continuing to provide budget resources to meet ever increasing demands in the business of the Attorney General's Office. Again, this year, there were budget reductions required by revenue shortfalls and the necessity to use reserved funds to meet business needs. Where necessary, expenditures were reduced. Through financial guidance, assistance to all of the divisions and promoting creative solutions, the Administrative Services Division maximized reduced resources so that the Attorney General's Office could operate at a professional level without resorting to layoffs or furloughs.

The Administrative Services Division is the Customer Service entity in the Attorney General's Office. ASD assures that there is financial guidance as well as well as timely sourcing of the goods and services needed to accomplish the work of the entire office.

Attorney General's Office staff members are considered to be the most important resource in the

office and Administrative Services pays very close attention to their needs. The division provides all the Human Resources services to support the staff and management as they strive to excel in their various endeavors to meet statutory responsibilities and provide value-added service to the State of New Mexico.

### LOOKING AHEAD

For the coming year, to the extent possible, the Administrative Services Division expects to continue doing more with less. Despite current difficult economic times and continued strain on state budgets and federal funding, ASD remains committed to providing creative solutions so that AGO personnel and their respective divisions can continue their important work. Our ultimate goal is to provide the necessary financial guidance and management assistance for the Attorney General to accomplish his statutory responsibilities to the people and government of New Mexico.





# BORDER VIOLENCE DIVISION

## DIRECTOR MARIA SANCHEZ-GAGNE

### VISION

The Border Violence Division (BVD) provides specialized legal and technical assistance and training to local and state agencies in New Mexico in matters of international criminal extraditions, human trafficking and money laundering. The NMAGO worked diligently to help create New Mexico's human trafficking criminal law. BVD has taken the lead role in New Mexico to prevent and combat human trafficking through instructing law enforcement on how to recognize and investigate the crime.

The division also provides statewide education via information-sharing partnerships, media campaigns and the establishment of statewide anti-human trafficking work groups. The NMAGO has also joined with officials from Arizona, California and Texas to form the Southwest Border Anti-Money Laundering Alliance (SWBAMLA). SWBAMLA was formed to enhance and better coordinate investigations and prosecutions of money laundering and crimes related to the trafficking of narcotics, weapons and humans along the border. In 2010, the BVD organized federal, state and local law enforcement and prosecutorial agencies to form the New Mexico Anti-Money Laundering Alliance. The division's role in the NM Alliance is to work with law enforcement and prosecutors in NM and provide them with resources to effectively investigate and prosecute offenders using all criminal and civil remedies to pursue and stop narcotics, weapons and human traffickers or smugglers. In addition, BVD's training endeavors extend to Mexico, particularly the State of Chihuahua, where along with New Mexico State Police; the division has trained numerous law enforcement officials and prosecutors on trial procedure, crime scene investigation and advanced law enforcement techniques.

### YEAR IN REVIEW

The pursuit of criminals who have fled the country is a significant element of BVD's mission. The division currently has a case involving fugitive, Raul Chavez Ramirez, a suspected child sex predator who was finally arrested this October in Mexico and is awaiting extradition. The Ramirez case began almost seven years ago in 2004. Upon his return to New Mexico, BVD will prosecute Ramirez on all State charges.

Another case concerns fugitive Noe Torres, charged with first degree murder in the death of a 10 year-old boy from the Curry/Roosevelt County area. Torres also is charged with attempted murder and shooting at a dwelling or occupied building. BVD has been working to obtain this particular arrest warrant for more than a year. Torres is believed to still be hiding out in Mexico. Additionally, BVD is working on international provisional arrest warrants for 6 other fugitives.



The Border Violence Division has produced the first three indictments and one conviction under New Mexico's anti-human trafficking law. Working with the Albuquerque Police Department, a Nevada man was charged with one count of human trafficking and three other related felony crimes involving forced prostitution. He later pled to one count of Human Trafficking and one count of accepting earnings of a prostitute with a maximum exposure time of 3 years incarceration. His sentencing is scheduled in 2011.

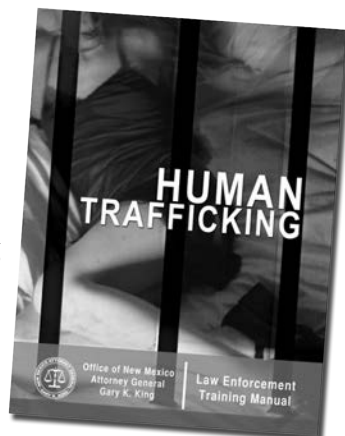
Also, a man and woman from Minnesota were each charged with human trafficking and related crimes. The victims are receiving help including statutorily mandated benefits and services.

The division has opened 24 new human trafficking investigations this past year based upon tips, leads and referrals provided by BVD partners and citizens throughout the state.

BVD's partnership with SWBAMLA best represents the division's expanding vision and mission. The division recently added a Criminal Analyst and a Field Investigator. By identifying, preventing and reducing money laundering, law enforcement can better fight the smuggling and trafficking of humans, narcotics, weapons and currency along the US/Mexico border.

The N MAGO was awarded an American Reinvestment and Recovery Act (ARRA) grant from the Department of Justice ("Rural Law Enforcement Assistance: Combating Rural Crime") and implemented the Border Violence Initiative to combat human trafficking in New Mexico and to supplement the N MAGO's foreign prosecution and international extradition of fugitives mission. The grant created an additional four positions: Prosecutor, Special Agent, Program Coordinator and Administrative Assistant. The funding has augmented the already-existing resources in the BVD and has allowed the BVD to implement projects aimed at combating human trafficking throughout New Mexico. The ARRA grant funding has allowed for the research, design and production of a comprehensive Anti-Human Trafficking Resource and Referral protocol manual for use by law enforcement personnel from around the state.

In September, 2010, the division was awarded a \$215,000 federal grant by the US Dept. of Justice. The funds, obtained with the help of U.S. Senator Jeff Bingaman, will be used to: a) create a Special Agent position; b) sponsor two training conferences in New Mexico specifically designed to educate service providers, first responders, social service agencies, etc. with information regarding human trafficking including victim identification, available resources and statutorily



mandated victim services for victims of human trafficking; and c) to provide statewide education and general public awareness about human trafficking. Among the plans; a media campaign featuring billboards in key counties, advertisements at bus shelters and on the inside and outside of buses. Also being developed is a video and accompanying guide for use by agencies throughout the state working to combat human trafficking.

- Since the enactment of New Mexico's human trafficking law, the BVD has provided training to almost 2,000 individuals including 1,240 this past year.
- BVD has established 185 collaborative partnerships to date. These partnerships bring together law enforcement, legal entities, service providers, faith-based communities and community groups in a coordinated effort to combat human trafficking. The combined work of these groups is pivotal in educating the general public, reaching vulnerable communities, providing much-needed services to the victims, and in providing training to law enforcement. This kind of collaboration results in increased awareness of the crime leads to more rescues of victims of human trafficking and ultimately, to increased prosecutions and convictions of traffickers.
- BVD has continued its Public Information Campaign on human trafficking via radio interviews, newspaper articles, Website information, and television ads. 19,344 television and radio spots have run throughout the state. Funding for this awareness campaign was made possible by a 2008 NM State Legislature appropriation.
- In previous years, BVD established Regional Anti-Human Trafficking work groups throughout New Mexico. In 2010, the division provided assistance and technical support to these groups located throughout the thirteen NM Judicial Districts. Las Vegas is the latest location added to the list of statewide work groups. BVD helps all work groups respond to data on their individual community needs regarding anti-human trafficking activities and provides them with necessary training and materials. BVD promotes development of local action plans.



## LOOKING AHEAD

The Border Violence Division looks to expand efforts to:

1. Engage in additional multi-agency, multi-jurisdictional partnerships and alliances in order to best combat human trafficking, money laundering and to bring to justice more fugitives who have fled the country;
2. Hone information and intelligence gathering capacity by developing appropriate technology and ways to share the information garnered in BVD investigations and operations;
3. Focus on developing a more proactive law enforcement investigative capacity regarding human trafficking and labor exploitation and expand appropriate services for victims (including the critical need for housing);
4. Seek funding from relevant and previously untapped sources;
5. Continue education efforts regarding human trafficking via statewide presentations, trainings, and a massive statewide public information program to encourage citizens to report to law enforcement if they see signs of human trafficking and to assist victims in seeking help;
6. Establish a toll-free statewide hotline to encourage reporting of suspected human trafficking activities.
7. Work to advance BVD legislative policy priorities.



# CIVIL DIVISION

DIRECTOR ELIZABETH GLENN

## VISION

The Civil Division's three primary areas of responsibility are: (1) providing legal advice and representation to more than 100 state agencies, boards and commissions; (2) researching and drafting Attorney General opinions and advisory letters in response to requests by state legislators, state officers and district attorneys; and (3) enforcing the Open Meetings Act and Inspection of Public Records Act by investigating and responding to complaints alleging violations of the Acts and providing training to state and local government bodies and members of the public regarding their rights and responsibilities under the Acts. Other responsibilities of the Civil Division include reviewing and approving state professional services contracts for compliance with the Governmental Conduct Act, answering writs of garnishment seeking to attach state employee wages, and issuing approving opinions for school district general obligation bond issues. The division's Charities Unit is responsible for registering nonprofit and other charitable organizations, conducting financial reviews and taking appropriate legal action against charitable organizations that violate the Charitable Solicitations Act or their charitable purposes.

## YEAR IN REVIEW

- During the 2010 Legislative Session, the Civil Division received, routed and administered 219 requests from the Legislative Finance Council and others for bill analyses. The Attorney General's Office prepared 200 bill analyses, 49 percent of which were drafted by the Civil Division.



- Civil Division AAG Tania Maestas provided legal advice and assistance to the Secretary of State's Office before, during and after the 2010 primary and general elections. The AGO fulfilled its statutory duty to assist the Secretary of State's Office on Election Day by having AGO personnel available at various polling places throughout the state to provide guidance and assist in resolving issues.
- The Attorney General's Office issued 7 formal opinions and 26 advisory letters. Topics addressed included the statutory restrictions on campaign contributions that went into effect on November 3, 2010; the authority of school districts to use general obligation bond proceeds; the Secretary of Education's authority to create new school districts; the Sentencing Commission's authority to allow its members to participate in meetings by proxy; and the Educational Retirement Board's authority to indemnify Board members for legal expenses.
- Civil Division provided legal services to state agency clients, including providing legal advice at board meetings, disciplinary hearings and rulemaking proceedings; defending agency decisions in judicial appeals; and reviewing contracts and other legal documents. This year, the division provided legal advice and representation for state agencies in several controversial and contentious rulemaking proceedings, including the Water Quality Control Commission (outstanding natural water resources nomination); Environmental Improvement Board (air emissions and cap and trade regulations) and the Board of Acupuncture and Oriental Medicine (scope of practice regulations). The division assisted the Department of Workforce Solutions in the

prosecution of prevailing wage cases, resulting in the recovery of approximately \$2 million in wages for employees on public works projects.

- The division handled approximately 45 judicial appeals and similar court proceedings on behalf of state boards, commissions and agencies in 2010. These included challenges to decisions by: professional licensing boards to revoke or suspend licenses, the State Alcohol and Gaming Division to revoke or deny the transfer of liquor licenses, and the Public Employee Labor Relations Board regarding collective bargaining matters under the Public Employee Bargaining Act.
- The division published an Administrative Procedures Guide, which provides practical guidance for administrative hearings and rulemaking conducted by state professional licensing boards and other agencies.
- The Civil Division received 38 complaints alleging violations of Open Meetings Act and Inspection of Public Records Act. To date, the division has issued 29 determination letters responding to the complaints. The remaining complaints are still being investigated, have been withdrawn or have been otherwise resolved. Members of the division held 10 training sessions on both Acts throughout New Mexico as part of the AGO's outreach program and made additional presentations at trainings and conferences conducted by the League of Women Voters, Municipal League, Association of Counties, DFA's Local Government Division, the New Mexico Rural Water Association and the State Bar of New Mexico, among others.
- The division published the 7th edition of the Attorney General's Open Meetings Act Compliance Guide.
- The Civil Division issued 36 approving opinions for school district general obligation bond issues totaling \$333,310,000.
- The Charities Unit had 1,109 new registrations in 2010, bringing the total number of registered charitable organizations to 7,644. The Unit is leading the nationwide multistate action against a target group of organizations and the Director of the Unit has been appointed by the incoming President of the National Association of State Charity Officials to the NASCO multistate

committee. The Unit was the first state to halt operations by the United States Navy Veterans Association, now the subject of inquiries by eight other states the IRS and Congress, grand jury indictments, nationwide warrants and recent arrests.

## LOOKING AHEAD

The Civil Division will renew its efforts to enhance communication and cooperation with state agency clients to ensure that they are able to effectively perform their public functions within the confines of their statutory authority. Regarding the Open Meetings and Inspection of Public Records Acts, the division will continue to implement the Attorney General's policies for facilitating the handling and resolution of complaints and providing training statewide. The Charities Unit plans to promulgate rules implementing the Charitable Solicitations Act in 2011 and to roll out a comprehensive education and training program for charities, professional fundraisers and the public.



# CONSUMER PROTECTION DIVISION

## DIRECTOR KAREN MEYERS

### VISION

The Consumer Protection Division is charged with enforcement of consumer protection laws to prevent and deter unfair, deceptive, and unlawful practices that injure consumers and harm businesses operating lawfully in the competitive market place. Facing an ever increasing number of consumer complaints, the staff works to promote and improve consumer protection. Staff continues to respond to economic issues facing New Mexico, including mortgage foreclosure procedures, predatory lending, consumer fraud, and consumer protection in financial matters. The Consumer Division also monitors the endless number of scams that are increasingly evident in our society. Through community education, outreach, scam alerts to consumers and media, and a counterfeit database, the Attorney General and his staff provide consumers the information they need to avoid becoming victims of a scam or identity theft.

### YEAR IN REVIEW

This division received more than 20,000 consumer calls in 2010 – an estimated 18% increase from the prior year. The following represents a snapshot of CPD activity last year:

**Community Education and Outreach:** 60+ presentations statewide.

#### **Dispute Resolution of Consumer Complaints:**

- \$2.2+ million restitution to consumers;
- Cancellation of used car dealer contracts due to failure to disclose auto damage to consumer;
- Loan modifications to allow homeowners to stay

in their homes and avoid foreclosures;

- Monitoring and investigations of suspicious business practices;
- Investigation and cease and desist orders issued to out-of-state companies engaged in mortgage rescue scams;
- Promulgation of regulation to require the disclosure that a debt is time-barred by debt collection company demanding repayment;
- Legislative adoption of the Mortgage Foreclosure Consultant Fraud Prevention Act making it illegal to collect an up-front fee by companies making fraudulent promises to help homeowners facing foreclosures;

#### **Legal actions to enforce consumer protection laws:**

- Lawsuit challenging the lending practices of Cash Loans Now and American Cash Loans, the district court found that the Defendants' marketing practices are procedurally unconscionable and violate the Unfair Practices Act. Loans made by the Defendants typically are small loans of \$50 to \$300 with annual interest rates in excess of 1,100%, marketed to persons with low income and limited credit access. The Court has reserved the remedy portion of the trial which will be scheduled and heard at a later date.
- CPD secured restitution in excess of \$100,000 for injured consumers after contempt proceedings against an auto dealer who took consumer money but failed to pay off the contracts on vehicle trade-ins and then went out of business.
- Summary Judgment has been entered by the district court against a Texas attorney who has been soliciting clients in New Mexico, although not licensed to practice law in New Mexico, without disclosing this material fact and who



used a client retainer form with terms that violated the Unfair Practices Act. Restitution claims for consumers are pending in this lawsuit.

- Filed enforcement action against individual offering immigration services without a legal license and in violation of the law;
- Pending legal action against land developer who sold land without disclosing that the water was undrinkable;
- Suit against jewelry company for false and deceptive advertising of prices and deceptive practices in the use of leasing program in the sale of jewelry;
- Unfair and deceptive practices challenge against mortgage rescue company that took money from consumers but did not provide services;
- Restitution to consumers in multi-state settlement with DirectTV for deceptive and unfair practices;
- Multi-state settlement against debt management services company that engaged in deceptive and unfair practices; and,
- Filed amicus brief before the New Mexico Supreme Court in *Truong v. Allstate Insurance Company* successfully challenging the trial court's decision that barred application of the Unfair Practices Act to the claims practices of defendant.

gain unfair and illegal advantages over consumers. The staff will continue its outreach and education focus because knowledgeable consumers help level the marketplace playing field. But, when violations of the law are identified, the Office of the Attorney General will pursue all available legal remedies to ensure the rights of consumers and advance marketplace fairness throughout the state.

### **New Mexico's Commonly Reported Consumer Problems** (in order of frequency)

Used Car Sales  
Debt Collection  
Car repairs/estimates  
Counterfeit Checks  
Cable/Satellite TV/Radio  
Credit/Debit Cards  
Misc. Consumer Sales  
Timeshares  
Direct mail Solicitation  
Small Loan Lenders

## LOOKING AHEAD

With consideration to increasingly limited resources, the staff of the division will assess how best to focus its work to have the greatest impact increasing consumer protection and preventing or remedying the impact of consumer fraud. The staff of the division will continue its successful dispute resolution efforts to assure that consumers and business can resolve disputes efficiently and economically. The division is committed to working with other state agencies and interested parties to respond to problems of predatory lending, the impact of mortgage foreclosures and ongoing sharp dealings by some businesses that use deceptive practices to





# CRIMINAL APPEALS DIVISION

## DIRECTOR MARGARET MCCLEAN

### VISION

The Criminal Appeals Division represents the State of New Mexico in the state district courts, the New Mexico Court of Appeals, the New Mexico Supreme Court, the federal district court, the Tenth Circuit Court of Appeals, and the United States Supreme Court in all criminal and habeas proceedings. This duty is mandatory and is one of the core functions of the Attorney General's office. See NMSA 1978, Section 8-5-2. Members of the division also serve on the DNA oversight committee, the appellate rules of procedure committee, and the equal access to justice commission. The division participates twice per year in the statewide district attorneys conference as speakers. Current updates on New Mexico law and federal law impacting New Mexico criminal prosecutions are sent on a routine basis. Currently, the division is staffed with fourteen attorneys and two support staff split between Santa Fe and Albuquerque. As of January 1, 2011, the division is understaffed by at least two attorneys.

### YEAR IN REVIEW

- 88 opinions have been published from the New Mexico appellate courts involving the Criminal Appeals Division.
- 296 non-published opinions were issued.
- 133 cases were handled involving homicide.
- 89 DWI appeals.
- 110 drug cases.
- 43 child abuse cases.
- 268 appeals involved criminal sexual assaults.
- Approximately 708 cases were opened or active.
- 183 memoranda were filed in the New Mexico Court of Appeals.
- The New Mexico Supreme Court granted 45 certiorari petitions filed by the division.

- 71 responses were filed in the New Mexico Supreme Court on Rule 12-501 and Rule 12-502 cases.
- 33 oral arguments were heard in the New Mexico appellate courts.
- 147 extraditions were reviewed for legal sufficiency at the request of the Governor.
- One oral argument was held in the Tenth Circuit Court of Appeals in September 2010.
- Federal evidentiary hearings were held in Santa Fe and Albuquerque. One hearing involved a 1982 murder in Carlsbad, New Mexico and the issue of recantation of two witnesses for the State.
- The division prepared bill analyses for the 2010 Session for legislation affecting criminal law.
- The division reviewed proposed legislation for the 2011 Session.
- Ann Harvey and James Grayson filed a brief in opposition in *Bullcoming v. New Mexico*, United States Supreme Court No. 09-10876.
- James Grayson, Victoria Wilson and Ann Harvey prepared and filed a brief on the merits in *Bullcoming v. New Mexico*, United States Supreme Court No. 09-10876, on January 10, 2011.
- The overwhelming majority of cases reported in 2010 (approximately 355 cases) involved the appeals division.

### LOOKING AHEAD

At current staffing levels, in 2011 each attorney will have an increased workload with an average assignment of five pending briefs and other projects. All federal habeas corpus cases are assigned to the division director. Attorneys possess specialized representation in death penalty cases, DWI cases, and sexual assault appeals. In addition to an overwhelming and varied caseload and appearances in court, the division also provides support and

advice through an established liaison program to the district attorneys in the thirteen judicial districts throughout New Mexico and counsels other divisions within the Attorney General's Office. In the last year, appeals involving the unique issues raised by the prosecution of government officials have proven to be time-consuming and complex. The specialized knowledge and expertise of criminal law, appellate law and writ proceedings are distinctive to the appeals division. Another function is to distribute information required by the Victims of Crime Act. During the past year, Joel Jacobsen has continued the Crawford update for all prosecutions throughout the United States. Mr. Jacobsen won the "Sisyphus Award" at the National Equal Justice for Children Conference in May 2010.



Attorney General Gary King will argue before the United States Supreme Court on March 2, 2011 in *Bullcoming v. New Mexico*.





# GOVERNMENT ACCOUNTABILITY DIVISION

DIRECTOR ANN BADWAY

## VISION

This division of the Attorney General's Office operates on the premise that public corruption poses the greatest single threat to the credibility of government institutions at all levels. Good government is the mission; the method is investigating and prosecuting public corruption to help ensure that state government benefits all New Mexicans. Attorney General King is committed to protecting the citizens of New Mexico from abuses in government. As part of this dedication to good government, the Government Accountability Division serves to help vigorously enforce laws intended to keep government open and clean.

## YEAR IN REVIEW

Major cases being prosecuted include:

### **Region III Housing Authority**

Defendant Vincent "Smiley" Gallegos is charged in two separate but related felony cases involving the Region III Housing Authority. Gallegos served as Executive Director of Region III from 2003 through 2006 when the housing authority issued \$6 million in bonds to the State Investment Council. Region III later defaulted on the loans and a subsequent investigation lead to criminal indictments against Gallegos, Robert Strumor, David Hernandez and Dennis Kennedy. Defendants moved to disqualify the Attorney General from prosecuting the cases. Judges in both district court cases denied defendants' request to disqualify the Attorney General's Office. Defendants were also denied applications for interlocutory appeal with the Court of Appeals.

### **Secretary of State Help America Vote Act Media Campaign**

Former Secretary of State, Rebecca Vigil-Giron,

along with co-defendants Elizabeth Kupfer, Joseph Kupfer and Armando Gutierrez, were each charged by a grand jury with fifty felony counts relating to a \$6 million Help America Vote Act media campaign contract. Defendants have moved to disqualify the Attorney General's Office from prosecuting charges relating to the contract. Motions are scheduled to be heard in 2011.

### **Jerome Block Jr. and Jerome Block Sr.**

A grand jury charged Block Jr. and Block Sr. with violations of the New Mexico Voter Action Act and other crimes relating to Block Jr.'s use of money that he received from the Public Election Fund during his 2008 campaign for election to the office of Commissioner of the Public Regulation Commission. Block Jr. and Block Sr. moved to dismiss the Voter Action Act charges on grounds that the Attorney General has no authority to prosecute such charges unless the Secretary of State has first referred the matter to the Attorney General for prosecution. Based on certain statutory language contained in the Voter Action Act, the district court granted defendants' motion. Block Jr. also moved to dismiss some to the charges on the additional ground that civil fines previously assessed by the Secretary of State were criminal punishments, so that the subsequent criminal prosecution by the Attorney General put him in double jeopardy. The district court granted the defendants' motions and dismissed all charges under the Voter Action Act. The Attorney General has appealed the district court's order of dismissal. The appeal is now pending before the Court of Appeals.

## LOOKING AHEAD

The division expects to continue its stated mission in the year ahead.



# INVESTIGATIONS DIVISION

## DIRECTOR EARL HOLMES

### VISION

The Investigations Division is the law enforcement arm of the Attorney General's Office. Comprised of highly experienced investigators, it is the team's purpose to assist investigative operations conducted by state, local and county law enforcement agencies. The division is made up of: The Government Accountability Investigations unit; the Internet Crimes Against Children unit (ICAC); and the Special Investigations unit. The division also works jointly with other New Mexico state agencies including State Tax and Revenue, Public Education Department, Environment Department, and the Secretary of State on criminal investigations, embezzlement and fraud cases. Additionally, the Investigations Division investigates inquiries and active felony cases statewide. The division handles in-take call requests from New Mexico citizens daily.

### YEAR IN REVIEW

*Government Accountability Investigations*  
2010 was an extremely busy year as agents continued to work on several major in-depth criminal cases. A number of completed cases were forwarded to the Government Accountability Prosecutions Division for review whereby subsequent indictments and convictions followed as a result of these investigations. The team continues to work jointly with federal, state and local agencies in addressing state corruption and fraud. Agents have also supported other divisions and units within the Attorney General's Office with supplemental criminal, civil and internal investigations.

*Internet Crimes Against Children (ICAC)*  
The unit assisted agencies within NM and

throughout the nation with child exploitation crimes investigations and prosecutions. In its role as developer of the statewide ICAC Task Force this unit routinely assisted in tactical operations with State Probation/Parole, US Marshal's and the Federal Probation/Parole in the monitoring of sex offenders residing in NM. In 2010, the ICAC unit facilitated the development of six computer forensic labs in Las Cruces, Artesia, Clovis, Roosevelt County, Albuquerque, and Santa Fe. The federal grant funding for ICAC has allowed these affiliates to receive computer forensic training and investigative training to further combat crimes against children. The NMICAC Task Force now has 10 of the 13 NM District Attorneys Offices, a total of 58 state and local law enforcement affiliates/partners working together.



### *Special Investigations*

The unit assists district attorneys and local law enforcement agencies in complex and/or multi-jurisdictional investigations and in cases where local conflicts of interest arise; and conducts investigations as directed by the Attorney General. The division also investigates a broad range of criminal inquiries and cases, including white collar crimes, DWI, and violent crimes.

### LOOKING AHEAD

The investigative capabilities of the Attorney General's Office continue to evolve technologically. The Investigations Division expects to apply newly acquired technologies and methods internally and to its cooperative efforts involving federal and other state/local agencies. The division also plans to increase education and outreach efforts for New Mexico residents to address crime prevention and safety issues.



# LITIGATION DIVISION

DIRECTOR SCOTT FUQUA

## VISION

The Litigation Division of the Attorney General's Office strives to provide professional legal representation for state officials, judges, and state agencies. The division also advocates for New Mexico citizens by initiating lawsuits on behalf of the State when necessary. Additionally, the division seeks to conduct administrative prosecutions that further the policy goals of the various Boards and Commissions while protecting the due process rights of licensees. The division's success ratio remains consistently positive.

## YEAR IN REVIEW

In 2010, the division represented state officials, judges, agencies, and boards and commissions when those entities were sued in their official capacities in non-tort claims. The division also served as administrative prosecutor to 32 boards and commissions primarily for violations of the Uniform Licensing Act. Sanctions imposed ranged from fines to revocation of state-issued licenses. The division represented many judges and state officials whose decisions were challenged by writs of superintending control or by mandamus in the New Mexico Supreme Court and various district courts.

This division has also assigned a full-time attorney and paralegal to enforce the Tobacco Industry's Master Settlement Agreement, which includes filing actions against manufacturers who fail to comply with enforcement statutes and litigation against those who participate but fail to pay the statutory amounts due. The division also accepts service of process for the state and serves as a resource for all state departments. It monitors special commission attorney assignments and defends appeals in division cases.

The division concluded at least 30 litigation and 185 board and commission prosecutions in 2010. The division also monitored several writ filings in the Supreme Court and actively represented state officials and judges in approximately 35 writ proceedings.

Highlights include:

### *Bankruptcy*

Jim Jacobsen, the Office's bankruptcy attorney, appeared on behalf of the State in 173 cases filed in New Mexico in 2010.

### *Antitrust*

Deyonna Young assisted antitrust litigation settlement that netted more than \$180-thousand that was awarded to New Mexico food banks.

### *Securities*

Attorneys Scott Fuqua and Matthew Jackson, assisted several State agencies in securities-related matters in 2010. The Division continued oversight of the litigation filed on behalf of the State Treasurer's Office and the New Mexico Finance Authority against the Reserve money market fund that resulted in a recovery of approximately \$87.5 million to the State. The Division has also been working closely with the State Investment Council to pursue losses to the State in connection with the use by some fund managers of third party placement agents, and with the State Investment Council and the Educational Retirement Board in pursuing losses to both funds from investments made by fund managers in Madoff-related funds.

### *In re: WellCare Health Plans, Inc.*

The State was part of a nationwide class action against WellCare for losses sustained by the State Investment Council and the Education Retirement Board. New Mexico's share of the class settlement is

not yet determined, and will ultimately be based on how many members of the class make a claim on the settlement fund. The Division represented the State in this action through contract counsel.

*New Mexico State Investment Council, et al. v. Broadcom Corporation*

The State Investment Council was lead plaintiff in a securities class action against Broadcom Corporation that settled in 2010 for a cash payment of \$160.5 million. New Mexico's share of the class settlement amount has not yet been determined and will depend on the number of claims submitted by members of the class. The Division represented the State in this action through contract counsel.

*Tobacco Enforcement and Arbitration*

The Litigation Division actively enforces New Mexico's tobacco statutes and will represent the State in arbitration of the State's 2003 enforcement efforts. At stake in that upcoming arbitration is approximately \$35 million of the money that tobacco companies have paid to the State in connection with the Master Settlement Agreement signed in 1997.

*Civil Litigation*

*King v. Lyons*

Seth Cohen and Matthew Jackson represented the Attorney General's Office in a writ proceeding before the New Mexico Supreme Court seeking to block four land exchanges in the White Peak area of New Mexico between private land owners and the New Mexico Land Commissioner. The Supreme Court granted a stay on the pending exchanges. The Court has not yet ruled on the writ.

*In re: OppenheimerFunds, Inc.*

Matthew Jackson represented the State of New Mexico in ongoing proceedings concerning New Mexico's 529 college savings plan offered by the Education Trust Board. Those efforts resulted in a \$67.31 million settlement for New Mexico's plan holders. Those funds have not yet been distributed because of two ongoing cases filed by private plaintiffs.

*Leavell, et al. v. New Mexico Environmental Improvement Board*

Eric Miller represented the Environmental Improvement Board in a challenge raised to the Board's greenhouse gas rule-making brought by PNM and El Paso Electric. The lawsuit sought to halt a rule promulgation proceeding involving the possible regulation of greenhouse gases from fixed sources. The Board went forward with its rule-making proceedings, ultimately adopting rules regarding greenhouse gas emissions from fixed sources.

*Zangara Dodge, et al. v. New Mexico Department of Environment*

Eric Miller represented the Environment Department in a lawsuit brought by a number of New Mexico auto dealers and the National Automobile Dealers Association to the Department's authority to promulgate regulations regarding greenhouse gas emissions by motor vehicles. It was one of four test cases brought in the country. The plaintiffs ultimately dismissed the claim in the face of new federal regulations concerning such greenhouse gas emissions.

*Election-Related Litigation*

Scott Fuqua represented the Secretary of State in several election-related lawsuits including ballot access litigation, petition signature contests, and litigation related to New Mexico's third party voter registration agent law. In 2010, the Secretary of State settled a lawsuit brought by four third party registration agents in 2008 and promulgated regulations in connection with that settlement to clarify the statute passed in 2005. The Secretary of State also settled a portion of a case dealing with alleged violations of the National Voter Registration

*Administrative Prosecution*

*In re: Jose Valencia*

Matthew Jackson prosecuted a case on behalf of the Law Enforcement Academy Board in which the Board sought to revoke the law enforcement certificate of an officer who was caught on an FBI recording giving advice to a drug dealer about the ability of ballistics investigators to trace different kinds of weapons.

## LOOKING AHEAD

The Litigation Division will pursue its mission of providing excellent legal representation for New Mexico agencies and officials. The division also seeks to further expand its role in initiating lawsuits generated by other Divisions of the Attorney General's Office. The furtherance of the State's legal interests in a professional and ethical manner remains its primary goal.





# MEDICAID FRAUD AND ELDER ABUSE DIVISION

DIRECTOR ELIZABETH STALEY

## VISION

The Medicaid Fraud & Elder Abuse Division works to ensure the fiscal integrity of the New Mexico Medicaid program and the well-being of the state's Medicaid recipients by investigating and prosecuting those who attempt to abuse, neglect or exploit its recipients or defraud the program. MFEAD strives to assure the programmatic integrity of the Medicaid Program in accordance with federal requirements and to protect residents in facilities or those receiving Medicaid-funded in-home services in the community. The division establishes collaborative relationships in these areas with state and federal agencies through presentations, task forces and meetings. MFEAD also seeks recoupment from pharmaceutical companies that violate Medicaid regulations and participates in multistate and qui tam litigation to recover funds owed the New Mexico Medicaid Program.

## YEAR IN REVIEW

The Medicaid Fraud and Elder Abuse Division received more than 330 complaints of fraud, abuse or exploitation in 2010 by care or service providers, family members or people who prey on the elderly, ill or disabled. Those complaints came from a variety of sources, including state agencies, Medicaid recipients and their family members and law enforcement agencies. All complaints are reviewed by an attorney and an investigator. The division makes referrals to appropriate agencies of complaints that are outside its jurisdiction and informs the complainants of the actions that division staff is taking.

- Prosecutions and investigations increased significantly in 2010 as investigations progressed into formal legal action. There was a 200%

increase in the number of investigations as compared to 2009.

- There was a 147% increase in the MFEAD workload in 2008 and another 100% increase over that level in 2010.
- The focus on appropriate criminal prosecution of providers that commit monetary Medicaid Fraud and abuse and neglect of Medicaid recipients continued. Maltreatment of developmentally disabled New Mexicans remains a concern.
- Division staff obtained indictments for of abuse and neglect in nursing homes with heightened concern for unnecessary deaths. The trial for an unnecessary death is scheduled in Fall 2011.
- Active outreach to and collaboration with other agencies that deal with Medicaid fraud, abuse or neglect continued to address common issues and facilitate joint prosecutions.

## LOOKING AHEAD

- The completion of the specialized multidisciplinary team who work closely to investigate and prosecute Medicaid Fraud. In 2008, a certified public accountant and two Registered Nurse Medical Care Investigators were hired to fill vacant positions. These staff have made a demonstrable improvement in the Division's investigations.
- Continue to actively participate in the Medicaid Fraud Multistate Qui Tam Working Group to maximize monetary recovery utilizing Medicaid laws and regulations and the Fraud Against Taxpayers Act.
- Continued efforts to cement the relationships between agencies that deal with Medicaid matters through direct contact, meetings and investigation assistance with the goal of a continued increase the number of investigation referrals received.

- Continue to provide updated MFEAD presentations and handouts to providers and clients to increase awareness of MFEAD functions and capabilities among Medicaid recipients, family members and providers.
- Proactive facility visits to ascertain regulation compliance and recipient safety.
- Provide leadership to resolve the inconsistent programs and standards for medication aide assistance for vulnerable patients.

The division is certified to have 21 positions, which work in multi-disciplinary teams on each investigation. All of the legal and investigative staff are credentialed in their professions. In 2010, two positions were left vacant due to a shortage of state matching funds. The division anticipates increasing the staffing level to 100 percent as state appropriations allow.

### **2010 Medicaid Fraud and Elder Abuse Division Highlights:**

- 143 new investigations of fraud, abuse or exploitation opened
- Completion of 33 investigations
- 11 convictions obtained for Medicaid fraud, exploitation and abuse and neglect of New Mexicans
- 18 indictments returned
- Collections of more than \$1.64 million that were returned to the New Mexico Medicaid program
- Identification of more than \$85.5 million in Medicaid program savings for the State of New Mexico

The Medicaid Fraud and Elder Abuse Division of the Attorney General's Office is certified by the federal government to investigate and prosecute the abuse, neglect and exploitation of Medicaid recipients as mandated by federal and state law. Congress requires that each state that receives Medicaid funds have a federally certified Medicaid Fraud Control Unit that acts as a watchdog, independent of the state entity that receives and spends Medicaid funds. The division is financed through a federal grant that provides 75 percent of the resources on an annual basis. The New Mexico Legislature provides the 25 percent state matching funds. Medicaid payments that are made improperly to providers are recovered by MFEAD – often through the legal system -- and returned to the New Mexico Human Services Department to be used to provide additional Medicaid services.





# PROSECUTIONS DIVISION

DIRECTOR MARY HELEN BABER

## VISION

Internet crimes against children, (ICAC), child predators, DWI and domestic violence cases continue to be the primary focus of the Prosecutions Division. Significant cases selected by Attorney General King are assigned to Prosecutions for investigation, review and prosecution.

## YEAR IN REVIEW

ICAC resource prosecutor Jennifer Saavedra and Assistant Attorney General Shannon Murdock capped off the most successful ICAC prosecutions year in recent history by securing a jury conviction of 40 felony counts in *St. vs Felix Romero* on November 10, 2010. The defendant is awaiting sentencing in December 2010 for the 40 felony convictions, and is facing two more trials for possession of child pornography and for sex crimes against children. Both prosecutors have handled numerous cases this year in Albuquerque, Rio Rancho, Bernalillo, and other cases in the 1st, 2nd, 3rd, 11th, and 13th judicial districts. Unusual cases included a high profile case out of Colorado and an international case involving a Canadian predator.

Attorney General ICAC investigators, prosecutors Saavedra, Murdock and AAG Carlos Gutierrez teamed with ICAC partner agencies around the state in OPERATION PREDATOR which involved 22 search warrants, and 8 suspects arrested. Several of the new ICAC cases developed from OPERATION PREDATOR are being pursued by AG prosecutors.

Sentencing of predators who possess and or distribute child pornography is trending toward incarceration and significant prison terms in the state Department of Corrections. Frequently, the Attorney General collaborates with federal prosecutors to

ensure that Internet predators receive appropriate sentences for their crimes.

DWI resource prosecutor Donna Bevacqua-Young joined the Attorney General's Office in July 2010. In her few months with this division she has secured two jury trial convictions and has provided innovative satellite training in coordination with

Texas and Missouri colleagues. She has presented to law enforcement and prosecutors on national DWI issues in Louisiana and North Dakota AAG Bevacqua-Young consults frequently with prosecutors and law enforcement agencies across the state.



Violence Against Women Division's domestic violence resource prosecutor Sharon Pino, who joined the AG's office in March of this year, has conducted numerous trainings and provided legal resources to several hundred prosecutors, victim advocates and law enforcement statewide. In addition, she has an active caseload which includes cases in Silver City, Belen, Los Lunas, Belen and Española. Pino was recently recognized by the NM Coalition Against Domestic Violence for her outstanding contributions.

## LOOKING AHEAD

The Attorney General's existing outreach program to combat teen dating violence will be enhanced by a grant which was awarded in conjunction with the Public Education Department program to assist teen victims of domestic violence.

Internet predators will continue to be targeted by ICAC prosecutors and investigators. Prosecutions Division attorneys will give priority to cases involving sexual abuse of children, domestic violence, stalking, sexual abuse and DWI.



# WATER, ENVIRONMENT AND UTILITIES DIVISION

DIRECTOR STEPHEN FARRIS

## VISION

The Water, Environment & Utilities Division (WEUD) works to protect, preserve and recover New Mexico's beautiful but fragile environment as well as our precious water and other natural resources. Division staff accomplishes this task through litigation when necessary and through unique cooperative efforts with stakeholders such as farmers, environmentalists, municipalities, industry and state and federal government agencies. In addition, WEUD will continue to represent the interests of New Mexico's residential and small business consumers in matters of natural gas, electricity and telecommunications regulation.



## YEAR IN REVIEW

### **Water & Environment**

#### Interstate Rivers

In 2009, the State of New Mexico intervened in the Grand Canyon Trust case in federal district court in Arizona along with the other six states who are parties to the Colorado River Compact - Arizona, California, Nevada, Utah, Colorado and Wyoming. The case is a challenge by environmental groups to the operation of federal facilities on the Colorado River. The state intervened to defend existing environmental protections and to ensure that the compact was not violated. The judge in the case has largely ruled in favor of the States and the United States and the case is nearing a close. In addition, the Attorney General's Office continues to coordinate the multi-year legal and technical work necessary to defend against threatened interstate

litigation on the Lower Rio Grande. As a direct result of that effort the Attorney General is now involved in active negotiations with the United States Bureau of Reclamation to recover water which has been illegally allocated to Texas irrigators at the expense of farmers in southern New Mexico. On the

Colorado River and its tributaries, the Attorney General continues to serve as the legal advisor to New Mexico in the Upper Colorado River Compact Commission and in meetings with the seven Colorado River Basin states that are parties to the Colorado River Compact. Drought and other issues have raised the specter of interstate litigation on this river also, and the Attorney General is actively working with the New Mexico Interstate Stream

Commission to prepare to both defend and bring litigation to protect New Mexico's water as necessary.

#### Endangered Species

The Attorney General continued a multi-year effort to collaboratively solve endangered species problems in New Mexico while continuing to protect New Mexico's water and water users. Through the Middle Rio Grande Endangered Species Collaborative Program, the Attorney General is working in conjunction with the New Mexico Department of Agriculture, Department of Game and Fish and the Interstate Stream Commission to develop a Biological Assessment with the Bureau of Reclamation resulting in a long-term, sustainable Biological Opinion from the Fish and Wildlife Service.

#### Office of the Natural Resources Trustee (ONRT)

WEUD continues to provide legal counsel for the ONRT in support of its efforts to recover Natural Resource Damages (NRD) at sites with hazardous

substance releases throughout the State. These efforts were highlighted by settlement of the state's ground water NRD claims at three Freeport McMoRan mines near Silver City. The settlement is documented in a proposed Consent Decree in the New Mexico federal district court. An agreement in principle has also been reached for NRD regarding other resources at the three Freeport McMoRan mines. Work continues on finalizing the consent decree for the Chevron Molycorp NRD settlement for the mine near Questa, initiation of an NRD assessment at the Los Alamos National Laboratory and conduct of a NRD assessment for the Fort Wingate Depot Army facility. A pre-assessment screen was completed for Rio Algom Mining's ten mines/mill in the Ambrosia Lake mining district.

Tri-State Generation and Transmission Association, Inc. v. D'Antonio, is pending before the New Mexico Supreme Court on a petition for a writ of certiorari.

#### Environmental Crimes Unit

The Attorney General has obtained a grant from the United States Department of Justice to hire an Environmental Crimes Investigator for the Environmental Crimes Unit. The position has been advertised and the WEUD is in the process of filling the position.

#### Miscellaneous Litigation Support

*US Airways v. O'Donnell*, No. 09-2271, United States Court of Appeals, Tenth Circuit. WEUD provided an attorney to assist outside counsel and represent the Attorney General's Office at the 10th Circuit argument in this important preemption case defending New Mexico's RLD against a claim of federal preemption of state liquor licensing laws as applied to airlines that serve alcohol on flights originating or terminating in New Mexico. Argument was held on September 20, 2010. The matter is currently on remand before the United States District Court for the District of New Mexico, Honorable M. Christina Armijo, presiding.

*Ute Mountain Ute Tribe v. Homans*, 09-2276, United States Court of Appeals, Tenth Circuit. WEU

provided an attorney to assist outside counsel and represent the Attorney General's Office at the 10th Circuit argument in this important Indian preemption case involving whether New Mexico may tax production by private oil companies of oil produced on trust lands within the Ute Mountain Ute Tribe's Reservation. Argument was held on September 10, 2010, and no decision has yet been issued.

#### **Utilities**

##### PNM Cases

##### 10-00086-UT - PNM Rate Case

Only one electricity rate case was filed in 2010. PNM requested an increase of \$165 million from its customers – which included a 25% increase for residential customers. The rate filing for the first time included customers of PNM in southern New Mexico previously served by Texas-New Mexico Power Co. When PNM acquired TNMP, the Attorney General and PRC Staff negotiated a decrease in rates of approximately 20%, but rates for those customers continued to be higher than for pre-existing PNM customers. The parties have been negotiating for several months and hope to settle the case for less than half of PNM's proposed increase. At the same time the Attorney General hopes to consolidate rates for all PNM customers, so that customers previously served by TNMP pay the same as other PNM customers. The settlement would also aim to minimize other cost increases to customers for renewables and energy efficiency, which costs have been increasing recently.

In addition the Attorney General intervened in two other PNM cases:

10-00037-UT – PNM 2010 Renewable Procurement Plan (Hearings were in Jan. 2010)

10-00078-UT - PNM Application to revise Energy Efficiency Tariff Riders to Remove Disincentives

Because the other electricity utilities, El Paso Electric and Southwestern Public Service Company had rate cases in 2009, they along with New Mexico Gas Company, are expected to file rate cases early in the new year.



## Other Utility Cases

The Attorney General was involved in numerous other electricity utility cases, as well as several rulemakings by the PRC. In a rulemaking on electricity energy efficiency, the Commission adopted a rule that permits each utility to collect a rate of one cent for every kilowatt hour of lost sales. The Attorney General and several other parties opposed this rule because it permitted some utilities to collect several times the value of their actual lost revenues, and the collection in rates was not required to reflect actual lost revenues. After the commission refused rehearing of its Final Order, the Attorney General appealed the case to the Supreme Court asking for a stay of collection of rates from customers until a Final Order is issued.

32,475 - S.Ct. Appeal of 08-00024-UT (Rulemaking to Review NMPRC Rule 17.7.2 to Implement the Efficient Use of Energy Act)

32,535 – PNM v PRC & AGO – Mandamus in PNM Rate Case – Cert denied

10-00196-UT – SPS’ Renewable Plan  
10-00197-UT – SPS’ Energy Efficiency Case  
10-00199-UT – PNM’s Renewable Plan  
10-00295-UT – PNM Energy Efficiency Case  
10-00200-UT – EPE’s Renewable Plan  
09-00390-UT – EPE Energy Efficiency Case

32,193 - S. Ct. Appeal of 09-00094-UT (Qwest AFOR)

After the Public Regulation Commission imported findings of fact and conclusions of law from one case into the promulgation of Qwest’s new “alternative form of regulation” the New Mexico Attorney General intervened to ask the Court to cure this deprivation of all parties’ due process rights to present evidence and be heard on the merits.

09-00250-IN – 2009 Biennial Title Insurance Hearing

## **Telecommunications**

10-00315-UT - Sacred Wind Communications is a new company serving the hard to reach Navajo Nation using a form of wireless technology. In the first telecommunications rate case filed in more than

a decade in New Mexico, Sacred Wind is seeking ongoing subsidies from the New Mexico State Rural Universal Service Fund. The Attorney General intervened to conduct an analysis on how this would impact the fund and to advocate for a detailed study of all relevant costs to make sure the subsidy request is fully supported.

## **LOOKING AHEAD**

Most work of the Water, Environment and Utilities Division is ongoing and long term. Some litigation can take many years. Additionally, WEUD’s collaborative efforts to protect New Mexico’s interests involve projects that require long-term planning and implementation. These efforts are continuing and, as new issues arise, they will be handled in ways that protect and preserve New Mexico’s environment, natural resources, utility consumer interests and the health and welfare of the state’s residents. Currently, WEUD is leading negotiations with the United States Bureau of Reclamation regarding the operating agreement for the Rio Grande Project in southern New Mexico. The state has analyzed the effects of the agreement and believes that if a more fair agreement cannot be negotiated, the state will be forced to sue to recover water that has been unlawfully allocated to farmers in Texas and taken away from farmers in New Mexico.









First indictment under New Mexico's human trafficking law

Crime Fighter Training



Agreement with Small Smiles dental clinics - recovery for NM is \$361,970.88



National Consumer Protection Week



JANUARY

FEBRUARY

MARCH

APRIL

MAY

JUNE

AGO obtains six separate convictions against people accused of exploitation, fraud and physical abuse of elderly and developmentally disabled Medicaid recipients



Arrest of suspected child predator

Lt. Governor's Summit on Financial Education