

NEW MEXICO ATTORNEY GENERAL
GARY K. KING
ANNUAL REPORT



2013



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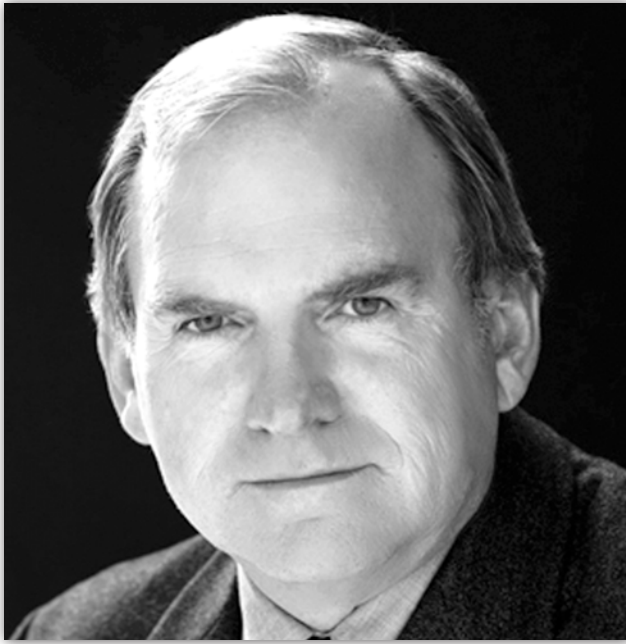
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MESSAGE FROM ATTORNEY GENERAL
GARY K. KING

2013 was a productive and busy seventh year of my administration as New Mexico's Attorney General. This annual report to the Legislature contains a general accounting along with specific examples of the work and activities of the New Mexico Attorney General's Office.

Close to home for legislators, my office provided legal analyses for more than **570** bills that were introduced during the 2013 Session. The Attorney General's Office workload for the 51st Legislature's Regular Session included **613** requests for bill analysis which resulted in **571** completed bill analyses, including **327** from the House and **286** from the Senate. There were **42** duplicate requests, Appropriations, and Memorials not analyzed. Additionally, I personally testified at numerous committee hearings throughout the Session and my attorneys were continuously present to answer legal questions from individual legislators. We remain committed to providing the same level of service this year.

In the following pages you will find whatever information we can share on the AGO's ongoing investigation involving fraud claims by auditors hired by the state Human Services Department against 15 behavioral health providers; the latest on my continuing efforts to protect New Mexicans

against the potential adverse effects of large-scale horse slaughter on human health and upon our natural resources; the positive results of our ongoing efforts to help homeowners who were caught up in a national foreclosure abuse case; updates on the AGO's legal challenges to protect our state's groundwater; our successful legal settlement that returned more than five million dollars to the State's fund for environmental cleanup of petroleum product contamination; and, many other legal actions and activities by the Attorney General's Office that benefitted the citizens of New Mexico.

I was especially proud to host the Safe School Summit in Albuquerque, which focused on new ideas and best practices to ensure that New Mexico children have a safe place to learn. Also, we updated the AGO policy that provides guidelines for attorneys who want to provide free legal help to people who cannot afford lawyers.

Once again, in 2013, Attorney General's Office personnel rose to the challenge of accomplishing a great deal while faced with reduced resources and continuing budgetary constraints. I am very proud of the work they do and our state is fortunate to have this team of professionals working on their behalf. Your continued support is much appreciated as we all work toward good government in 2014.

Sincerely,

GARY K. KING
New Mexico Attorney General

CHIEF DEPUTY ATTORNEY GENERAL *Albert J. Lama*



DEPUTY ATTORNEY GENERAL *Elizabeth A. Glenn*

This annual report documents some examples of how Attorney General Gary King and his staff carried out the duties and responsibilities of the Office in 2013. In addition to the many accomplishments detailed by each Division, the Office issued three policies intended to enhance the efficiency and efficacy of the Office's operations. The policies govern the retention and storage of electronic mail and attachments, provide for the identification and handling of conflicts of interest, and facilitate permissible *pro bono* activities by attorneys. We appreciate the support that members of the Legislature have provided and ask for their continued support in the coming fiscal year.

As Chief Deputy Attorney General and Deputy Attorney General, we are committed to doing our best to ensure that the Attorney General's responsibilities as the State's attorney and on behalf of the citizens of the State of New Mexico are met. Looking ahead to 2014, the Office faces many challenges and opportunities. Although available resources are still limited, our resolve to provide outstanding legal representation and sound advice to the State remains, as well as our

commitment to hold accountable those persons who act illegally or otherwise violate the public trust. Under Attorney General King's leadership, we will continue to support the enactment and enforcement of laws that protect the interests of our State, its people, and its resources.

Calendar year 2014 marks the final year of Attorney General King's term. As we look back at our accomplishments, special recognition must be given to the dedicated and hard work of the professional women and men we are proud to call our colleagues. We salute their tireless efforts to produce the highest quality legal services in State government.

Recognizing that political rhetoric will not satisfy our obligations as lawyers and as officers of the courts, we are confident that Attorney General King and all of us at the Attorney General's Office will continue to do the right thing: ensure that our elected and appointed officials receive the best legal advice available to assist them in making wise and effective decisions on behalf of all New Mexicans.

LEGISLATIVE TEAM

Stuart Bluestone, Phillip Baca, R. David Pederson



Attorney General King's Major Legislative Initiatives

Since his first-term election, Attorney General King has consistently directed the Attorney General's Office to be a strong advocate before the Legislature to protect the best interests of New Mexicans. The AG's Legislative Team includes Stuart Bluestone, Phillip Baca, and R. David Pederson. All have worked long and hard to spearhead important legislation to:

--Protect New Mexico consumers, especially with regard to homeowner protections, including addressing improper and unfair mortgage foreclosure practices and ensuring that homeowners are not saddled with unreasonable tax burdens imposed unilaterally by developers; provide that loans are not predatory traps that ensnare borrowers with debts they can not realistically repay; prevent unfair business practices with regard to automobile sales and repairs; and, represent the best interests of residential and small business owners in major utility rate-making proceedings and related issues brought to the Legislature.

--Protect victims of Human Trafficking, including enhancing law enforcement tools and providing needed services, resources and protections to victims preyed upon in this modern-day version of slavery.

--Combat the serious chronic problem of DWI in New Mexico, not only by imposing severe penalties for the many DWI repeat offenders, but also by seeking to raise the necessary funds to allow for much more effective education, prevention, and treatment programs to address underlying societal problems and thereby change entirely the culture of drinking and driving that has caused and continues to cause so many tragedies throughout the State; a particular focus has been placed on the serious problem of underage drinking.

--Protect New Mexico's precious water supplies, natural resources, and environment by being prepared to litigate fully and effectively against unjustified attacks and demands by any entity against New Mexico's rights to our water; by ensuring that our air, land, and water protection laws provide for realistic and effective enforcement mechanisms, including rights to private enforcement by New Mexicans harmed by the actions of polluters and by adopting effective civil penalty provisions to impose against violators of New Mexico's important environmental protection laws.

--Advocate for meaningful Ethics in Government and Campaign Finance Reform, e.g., by consistently supporting proposals for a truly independent Ethics Commission, with full authority to act and disclose governmental fraud and improprieties; seeking effective

disclosures of the real source of funds behind campaign finance programs that are being shielded from public scrutiny; working to disclose and, when necessary, ban campaign contributions that raise serious conflict of interest questions; and, trying to fix flaws in the limited public financing alternatives provided in NM law.

--*Guard the health* of the elderly, infirm and other vulnerable New Mexicans from Medicaid fraud and other health care delivery system problems and scams, including repeated problems associated with tobacco use and the more recent phenomenon of e-cigarettes, especially as targeted to our youth.

--*Fight Fraud against Government and Corruption* by Public Officials while ensuring that Open Meetings and Public Records laws provide for transparent government and that enforcement of those laws can be effective.

--*Protect Children and the Victims of Domestic Violence* by seeking stronger measures against the perpetrators of child abuse. This includes neglect, violence and sexual predators. The legislation should ensure that the laws on our books are interpreted with reasonable common sense to allow for prompt arrests and protections for innocent victims.

--*Prevent Wage Theft* and protect workers and employers who comply fully with the law, following up on recommendations by a Task Force created by Attorney General King to ensure that all workers are treated fairly and paid all that they are owed, e.g., by not being forced to work "off the clock" and not being paid for overtime legitimately worked.

Task Forces that AG King has created at his own initiative: 1) Human Trafficking; 2) Domestic Violence; 3) Animal Cruelty; 4) Wage Theft Prevention. He has followed up on each with legislative proposals, but he has also done much more than that, especially with law enforcement training and litigation in the Human Trafficking and DV areas.

These are only a portion of the wide range of legislative issues the Attorney General's Office works on to preserve and protect the public interest in New Mexico. As in past years,

Attorney General King fully expects to continue to do all he can in the 2014 Legislative Session to serve New Mexicans' best interests in the broad array of civil and criminal law reform issues considered by the Legislature.

GENERAL COUNSEL

R. David Pederson

Dave Pederson serves as chief legal adviser to the Attorney General and works on special projects, such as setting up the process and procedures for collecting Bias Base Police Policy from all New Mexico local law enforcement agencies; handling Sex Offender Parole Board extension hearings; AGO evidence handling and storage; and, compliance by all agency certified law enforcement investigators with Law Enforcement Academy Board requirements. As a member of AG King's Legislative Team, Mr. Pederson also helps formulate and present the AG's legislative agenda before state lawmakers. As General Counsel, he manages complex major litigation; is a member of the criminal case intake evaluation triage team; supervises the AG's Animal Cruelty Task Force; coordinates Animal Welfare issues with outside agencies; and, he reviews agency "cold cases."

General Counsel Pederson is a member of the State and Federal Bar; former member of the New Mexico House of Representatives for eight years; and, he brings to the Attorney General's Office more than 35 years of legal practice, primarily in northwestern New Mexico.



CONSTITUENT SERVICES

Coordinator: *Cordy Medina*



Cordy Medina is the Attorney General's Office Constituent Services Coordinator. She works to resolve issues and problems reported to the AGO by the general public. Ms. Medina received more than **300** letters in 2013 asking for help on a wide range of constituent issues. She also dealt with hundreds of emails from the public and other state

agencies looking for direction on addressing various constituent concerns. Additionally, Ms. Medina fields hundreds of calls on her office telephones every year. Many constituents also make in-person visits to her office to speak with Ms. Medina.

Appropriate legal problems reported by constituents are routed to 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 the position of Constituent Services Coordinator as part of his "good government" philosophy in order to help people who might be having a difficult time finding the appropriate assistance with their particular issue. Judging by the hundreds of letters, phone calls, and emails she receives--and her reputation for helping people, Cordy Medina is widely known within the Attorney General's Office and other state government agencies as the person to contact for help navigating state government services.



ADMINISTRATIVE SERVICES DIVISION

Director: *Evangelina Tinajero*



VISION

The Administrative Services Division oversees the Attorney General's Office day-to-day fiscal operation and plans future expenditures within the parameters of the budget established and appropriated by the Legislature. The division also provides Human Resources Management, purchasing, and other services for the Office.

Overall, ASD provides the resources for the Attorney General's Office to perform its statutorily directed duties and responsibilities to the citizens of New Mexico

YEAR IN REVIEW

2013 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. Increased litigation and increased program activity in the agency's larger grants (three federally-funded and two settlement-funded) required refocused efforts to provide financial and management oversight. Where necessary, expenditures were reduced and in other cases, resources increased to meet the demands created

by increased litigation and its attendant expenses. Through financial guidance, assistance to all of the divisions and promoting creative solutions, the Administrative Services Division maximized available resources so that the Attorney General's Office could operate at a professional level within its designated budget.

In 2013, increased recruiting efforts were required in order to fill positions created by grants, retirements, and increased case load. Additionally, ASD continued to provide analysis of policies, practices, and pay rates to keep a pulse on the Human Resources and Employee Relations climate in the agency.

LOOKING AHEAD

For 2014, the Administrative Services Division expects to continue and expand services even though financial resources are restrictive. ASD remains committed to providing creative but sound solutions so that AGO personnel and their respective divisions can continue their important work.

BORDER VIOLENCE DIVISION

Director: *Maria Sanchez-Gagne*



VISION

The Border Violence Division (BVD) specializes in international extraditions, investigations, and prosecutions of human trafficking and money laundering cases throughout New Mexico. Using a multi-agency, multi-jurisdictional approach, BVD strives to educate and foster cooperation and mutual support among the network of legal, law enforcement, and social service agencies which serve as collaborative partners. BVD also provides investigative support and training to all NM law enforcement agencies. The Attorney General's Office drafted New Mexico's anti-human trafficking statute and has taken the lead role in training law enforcement, promoting awareness, and prosecuting New Mexico's first human trafficking cases. BVD provides awareness through trainings, media campaigns, and through the development of statewide anti-human trafficking work groups which have established partnerships between law enforcement and victim service providers.

YEAR IN REVIEW

Human Trafficking Cases: BVD is currently prosecuting eight individuals in Bernalillo County on human trafficking and other related charges. All individuals are currently awaiting trial.

International Extraditions: BVD is currently working with the U.S. State Department in Washington, DC and the government of Mexico on 10 Provisional Arrest Warrant Requests. In 2013, BVD and federal law enforcement partners successfully apprehended and extradited from Mexico fugitive Ramon Loya Jr. Loya was a fugitive from justice for more than four years.

Money Laundering: The Border Violence Division's New Mexico Anti-Money Laundering Alliance is currently investigating significant and complex money laundering cases throughout the state. These investigations include high-dollar money laundering operations, human trafficking operations, and narcotic trafficking organizations. A seven member racketeering, money laundering, and narcotics organization is currently being prosecuted in conjunction with the Twelfth Judicial District Attorney's Office in Alamogordo. In October, a significant illegal firearms importation/smuggling investigation was indicted by the U.S. Attorney's Office, District of New Mexico, in which the Alliance had a critical role. The Alliance continues to investigate 'funnel or pass through' accounts where bank accounts are held across the Southwest border and significant cash deposits are made in other parts of the country. The Alliance has made great strides partnering with federal, state, and local law enforcement agencies.

BVD TRAININGS:

2013 Human Trafficking Trainings: BVD provided four trainings to local law enforcement and victim service providers. The BVD Director was also invited by the U.S. Department of Justice (DOJ), Office Overseas Prosecutorial Development Assistance Training (OPDAT), to instruct a human trafficking course for investigators of the anti-kidnapping unit with the Office of Attorney General in Morelos, Mexico. She also served as a panelist on "Plenary: Trafficking in Persons Panel" at the National Association of Attorneys General 3rd International Association of Prosecutors North American and Regional Conference.

2013 Money Laundering Trainings: The Anti-Money Laundering Alliance provided three trainings, including a presentation to local bank employees in Deming. The training focuses on emerging trends of money laundering, Bank Secrecy Act, and federal & state money laundering and asset forfeiture laws. The Alliance continues to establish relationships with Compliance officials at local banks to foster direct communication.

LOOKING AHEAD

BVD will continue to provide human trafficking training and awareness for law enforcement, social service providers, victim service providers, and the general public; increase investigations and prosecutions pertaining to crimes involving human trafficking; and, coordinate benefits and services for victims of human trafficking.

The division will continue to provide assistance to District Attorneys throughout New Mexico with International Extradition Requests and increase International Extradition Requests by providing awareness trainings to law enforcement and District Attorneys.

The Anti-Money Laundering Alliance will maintain partnerships with federal, state, and local law enforcement agencies to investigate significant money laundering cases. The Alliance expects to continue providing training opportunities throughout New Mexico in 2014 as well as its outreach program in an effort to construct a statewide infrastructure for the investigation of money laundering.



CIVIL DIVISION

Director: *Mark Reynolds*



VISION

The Civil Division has three primary areas of responsibility: (1) providing high-quality legal advice and representation to more than 100 state agencies, boards, and commissions; (2) researching and drafting Attorney General's Opinions and advisory letters in response to requests by state legislators, state officers, and district attorneys; (3) enforcing the Open Meetings Act and Inspection of Public Records Act by investigating and responding to complaints alleging violations of the Acts and by providing training to governmental bodies and 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 certain provisions of the Governmental Conduct Act, answering writs of garnishment that seek to attach state employee wages, and issuing opinions in connection with school district general obligation bond issues.

YEAR IN REVIEW

The division provided legal services to state agency clients on a daily basis including legal advice at board meetings, disciplinary hearings, and rulemaking proceedings; defending and

enforcing agency decisions in judicial appeals; and, reviewing contracts and other legal documents. Some controversial and contentious proceedings handled by the division included an appeal of a decision by the Alcohol and Gaming Division to allow a liquor store opening; a suit brought by the town of Gallup challenging the authority of the Livestock Board; a continuing appeal of the Environmental Improvement Board's air emissions and cap and trade regulations; a continuing appeal of the Water Quality Control Commission's dairy rules; a challenge to rules promulgated by the Board of Chiropractic Examiners; and, an appeal of a decision by the Municipal Boundary Commission. The division also acted as counsel to the Secretary of State and provided advice and guidance on election-related issues.

The Civil Division reviewed or investigated approximately 91 inquiries and complaints regarding the Open Meetings Act and Inspection of Public Records Act. The division resolved approximately 71 inquiries and complaints through informal resolutions and formal determinations. The remaining matters are in the process of being reviewed or investigated.

The Attorney General's Office issued seven advisory letters and three formal Opinions. Topics addressed included whether a state legislator is eligible to serve on a state policy-making board; the validity of a settlement agreement entered into by a state entity; the authority of soil and water conservation districts to review proposed subdivision land transactions; interpreting the 72 hour agenda posting requirement under the Open Meetings Act; the legality of water rights application guidelines issued by the Office of the State Engineer; the applicability of the Governmental Conduct Act and Financial Disclosure Act on Infrastructure Development Zone board members; whether the governor can unilaterally withhold a capital outlay appropriation made by the legislature; the effect of a gubernatorial pardon on a person's eligibility to carry a concealed firearm; whether the Town of Cochiti Lake is subject to certain provisions of the state's public money statutes; and, the interplay and relationship of certain classes of gaming and horse racing under the Indian gaming compacts.

As part of the AGO's outreach program, Civil Division attorneys conducted 12 training sessions throughout the state on the Open Meetings Act and Inspection of Public Records Act, including four Attorney General's Office "Road Shows." The division made numerous additional presentations at trainings and conferences of other organizations and associations. Division attorneys also

answered telephone and email inquiries regarding the OMA and the IPRA on a daily basis. Questions came from government officials, members of the news media, and the general public.

The division continued to experience a substantial litigation caseload in 2013, handling approximately 85 new and ongoing judicial appeals and similar court proceedings on behalf of state agencies, boards, and commissions. These cases included challenges to decisions by professional licensing boards to revoke or suspend licenses; a lawsuit regarding the authority of the Livestock Board in relation to municipalities; ongoing challenges to Environmental Improvement Board and Water Quality Control Commission regulations; appeals of licensing decisions by the NM Racing Commission; personnel decisions of the Public Employee Labor Relations Board; challenges to the Construction Industries Commission; and, appeals of decisions by the Real Estate Commission, Alcohol and Gaming Division, Law Enforcement Academy Board, and multiple other state agencies.

The division reviewed and issued opinions on 41 school district general obligation bonds issues, totaling approximately \$200 million.

The Civil Division reviewed approximately 135 state agency contracts for legal sufficiency and/or compliance

with the former state employee provisions of the Governmental Conduct Act. The division processed 252 writs of garnishment involving creditor attachment of state employee wages.

During the 2013 Legislative Session, the Civil Division received, routed and administered 613 requests from Legislative Finance Council and others for bill analyses. The Attorney General's Office completed 571 bill analyses, more than half of which were drafted by the Civil Division.

LOOKING AHEAD

The division will continue to provide high-quality legal representation of state agencies. The Civil Division will seek to eliminate the backlog of opinion requests caused mostly by staffing shortages and increased litigation work load. To help ensure state agency clients are able to effectively perform their public functions, the division will continue to improve upon its training for boards and commissions on the administrative process. Regarding the Open Meetings and Inspection of Public Records Acts, the division will facilitate timely resolution of complaints and will continue to provide statewide training to government agencies and the public.



COMMUNICATIONS DIVISION

Director: *Phillip Sisneros*

VISION

The Communications Division is responsible for writing and distributing agency news releases, media advisories, publications, and other public interface for the office. The division conducts education & outreach presentations on behalf of the Attorney General's Office. Division staff also design and provide content for the AGO's website and work together with the IT staff to facilitate public access to agency's services using new and updated technologies.

The division's main 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 Communications Division Education/ Outreach Coordinator and support staff regularly present a youth targeted fast-paced discussion on the different types of online Cyberbullying. The presentation points out the emotional toll, legal consequences, and other negative repercussions that young people face when they engage in improper and illegal activities on the Internet and social media.

Generally in a school assembly setting, presenters discuss online behaviors such as sexting; online shaming; stealing of personal information; and, manipulation/altering of photos. Students are advised about what to do if they become victims of Cyberbullying. Members of the statewide law enforcement Internet Crimes Against Children Task Force are often brought in to emphasize the legal consequences during the presentation. New in 2013, the outreach effort includes a very popular and attention-getting performance and discussion by our resident beatbox artist who relates to the students in a manner that students understand and appreciate. This past year, the Cyberbullying

Presentation was given to students in Hagerman, Dexter, Farmington, Grants, Santa Fe, Albuquerque, and surrounding schools. It is estimated that 2500 students got the message.

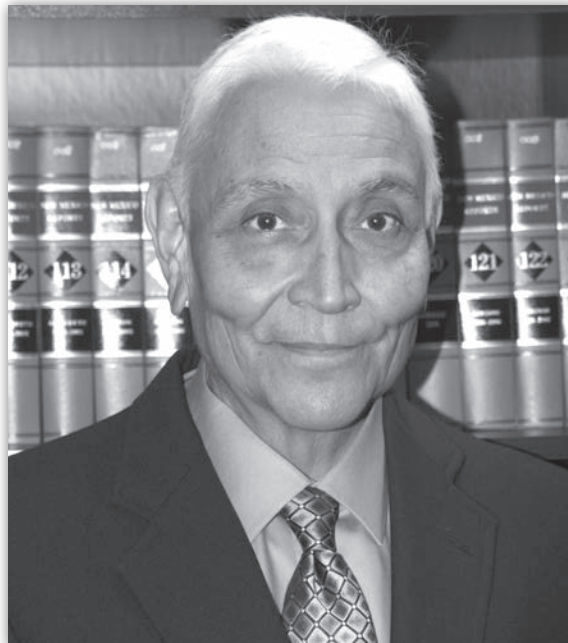
The AGO's Anti-Methamphetamine Initiative Presentation continues throughout the state. It was given to more than 400 participants in the Farmington area, and an estimated 500 in Santa Fe and Albuquerque. This continuing outreach

event is geared toward students and parents. It explains the dangers and legal consequences of meth use and manufacturing. The core goal of this presentation is to make students/parents aware of the continuing problem of meth abuse and to give them tools to recognize, report, and recover from usage of the deadly drug.

The Communications Division in-house publishes more than 75 booklets, tri-folds, and other instructive publications for public consumption. These publications cover subjects

such as avoiding scams, car buying tips, guarding personal information to avoid ID theft, recognizing human trafficking, preventing teen dating violence, and open government guides. Division staff distribute these and hundreds of other government publications to communities statewide.

The division also provides trial support for major civil and criminal proceedings through production of motion graphics, visual aids, and other services. Additionally, the Communications Division organizes and places media campaign advertising for various other divisions within the agency.





LOOKING AHEAD

The division expects to employ new technologies to expand the agency's public profile using additional social media and other communications platforms. It is a continuous challenge to inform the public about the many facets of the AGO and explain what the agency does and does not do; the Communications Division is committed to finding new and sustainable methodologies to meet that goal.



CONSUMER PROTECTION DIVISION

Director: *Karen Meyers*



VISION

The Consumer Protection Division (CPD) acts on behalf of the public to enforce consumer protection laws and prevent and deter unfair, deceptive, and unlawful practices that injure consumers and harm businesses that operate lawfully in the competitive marketplace. Division staff promote and improve consumer protection through:

- Community education and outreach;
- Voluntary dispute resolution services to resolve consumer complaints;
- Monitoring and investigations of suspicious business practices when business activities or practices may violate consumer protection laws;
- Regulatory enactment and legislative proposals to address evolving issues;
- Promulgation of regulations and legislative initiatives; and,
- Legal actions to enforce consumer protection laws where violations have occurred.

YEAR IN REVIEW

Dispute Resolution and Outreach for Consumer Complaints:

- Recovered approximately **\$2,327,183** for consumers through dispute resolution
- Number of new written complaints filed: **2,417**
- Number of complaints closed: **2,655**
- Presented **39** community outreach and education events to New Mexicans throughout the state on consumer protection issues.

Top Consumer Complaints:

Used Car Sales; Debt Collection; Mechanical Repairs; Consumer Sales; Counterfeit Checks; Sweepstakes; Mortgage Loan Modification; Cable/Satellite TV/Radio; New Car Sales; Furniture Sales; Timeshares

Consumer Protection Enforcement actions:

(examples). *State v. B&B Investments (dba Cash Loans Now) and American Cash Loans*--Unfair practices claim against small loan lender making loans in excess of 1,000% per annum. Decision entered December 2010 in favor of Plaintiff, finding that marketing practices were unconscionable and placed customers in cycle of debt and entering injunctive relief, but denying that loans and interest rates violated Unfair Trade Practices Act (UPA). Appeal to Supreme Court which heard oral arguments on November 25, 2013. While district court found that the lender's marketing and loan origination practices were unconscionable and contributed to the never ending indebtedness of the borrowers, court rejected the State's claim that loans on their face were unconscionable because of legislative deference on the issue of rate caps. Also on appeal is the denial of restitution for borrowers who were victims of the unconscionable lending practices.

- *State v. Universal Water Systems, d/b/a Ecowater New Mexico, et al., Filed September 30, 2013*--Universal sells water filtration systems door-to-door. Lawsuit alleged deceptive and unfair sales practices include the offering of a "free water test" as a pretense to sell the homeowners a water filtration system; failing to inform the consumers that the consumer has a three-day right to cancel; refusing to cancel a contract when a consumer provides notice to cancel within the three-day time period; failing to disclose the true cost of the system; taking a security interest in the consumer's home and improperly asserting a materialmen's lien.
- *State v. Greentree*--Consent Decree filed in case against mortgage servicer who sought appointment as the personal representative (PR) of a borrower's estate through use of an informal probate proceeding and then pursued mortgage foreclosure against the estate, served itself as PR and failed to answer the

complaint for foreclosure or protect the interests of any estate beneficiaries. Consent Decree provides for payments of civil penalties and injunctive relief.

- *State v. Law Offices of Michael J. Gopin*-- Filed December 12, 2007. Attorney General intervener in private lawsuit against Texas attorney soliciting clients in NM without a license and for unfair and deceptive trade practices in services provided, including taking a property interest in client's settlement and use of power of attorney that divested client of right to approve any settlement offer. Judgment entered against Defendant and Attorney General awarded civil penalties of approximately \$1.67 million and restitution for all clients of the attorney. Second action filed alleging fraudulent transfer of property under the Uniform Fraudulent Transfer Act. See NMSA 1978, § 56-10-14 to 56-10-25 based on transfer of property to defendant's wife, leaving defendant involvement. Proceedings on collection of judgment are pending and the underlying case is on appeal by Defendant.
- *State v. Credit Arbitrators, Second Judicial District, Filed 2012*--Defendant is a debt settlement company that charges up-front fees for debt settlement services and engages in other practices in violation of federal and state law. This action was brought under the Telemarketing and Consumer Fraud and Abuse Prevention Act, the accompanying Telemarketing Sales Rule ("TSR"), and the New Mexico Unfair Practices Act ("UPA"), to obtain preliminary and permanent injunctive relief, restitution, damages, civil penalties, and other equitable relief for Defendants' violations of the TSR and the UPA. This case is pending before the Court; both parties have filed motions for summary judgment.
- *State of N.M., ex rel. Gary K. King vs. Fernando Chavez-Guillen, Rick Mendez, Individually, and d/b/a Enchantment Homes, Filed May 3, 2011*--Chavez, an unlicensed mobile home dealer sold 18 mobile homes to mainly Spanish-speaking immigrant consumers, taking a down payment, and failing to deliver the mobile home. Chavez made some of the sales at the business property of a licensed mobile home dealer. The court has issued a warrant for Chavez' arrest for contempt of court in failing to file a ne exeat bond with the court.
- The State moved to join an additional party, individually. Case is pending.
- *State v. A-Reliable Engine Rebuilders, Filed August 21, 2012*-- Defendant violated the Unfair Practices Act in failing to provide an automotive repair estimate, failing to post warranty disclosure, offered to rebuild engines, rebuild engines were not fit for their ordinary purposes or merchantable, in violation of UCC and the Unfair Practices Act. Final judgment entered.
- *State v. Pfizer*--Defendant, in the course of marketing, promoting, selling, and distributing the prescription drugs Zyvox® and Lyrica® engaged in a course of trade or commerce which constitutes unfair, false, deceptive, or misleading acts or practices. The aforementioned is therefore unlawful under the New Mexico Unfair Practices Act; by promoting Zyvox®, despite assuring FDA in response to its Warning Letter that it discontinued such promotion; and Lyrica®, by claiming superiority of these drugs over other drugs without substantial evidence and by promoting these drugs for uses that have not been shown to be safe or effective, thereby representing that these drugs have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities, or qualities that they do not have. Settlement amount: **\$728,294.00**.
- *State v. Google: Assurance of Discontinuance (multistate)*--The states alleged that Google misrepresented a material fact, and omitted to state a material fact regarding how consumers can use Google's Ads Settings tool or any other Google product, service or tool to directly manage how Google serves advertisements to consumers' Browsers. Settlement Amount: **\$253,093.27**
- *State V. Affinion/Webloyalty Consent Decree (multistate)*--Defendants' business practices were developed to induce members of the public to purchase memberships in their various membership programs; made, disseminated, or caused to be made or disseminated before the public untrue or misleading statements which they knew, or by the exercise of reasonable care should have known, were untrue or misleading at the time the statements were made or disseminated, in violation of the New Mexico Unfair Practices Act NMSA 1978, Section 57-

12-2 (D), and (D)(14). Specifically, Defendants have violated the New Mexico Unfair Practices Act NMSA 1978, Section 57-12-2 (D) generally, and (D)(14) in that they have: used marketing to sign up consumers to membership programs the consumer does not know they are joining; obtained inadequate consent from consumers prior to and during enrollment in Defendants' membership programs; used deceptive billing practices; failed to send post-enrollment communications to consumers who enrolled in Defendants' membership program via online or direct mail, which properly disclose the material terms of Defendants' membership programs; failed to send communications to consumers, regardless of the method of enrollment in Defendants' membership program which properly disclose the benefits associated with and changes in terms for Defendants' membership programs; automatically renewed memberships at the expiration of each periodic (whether annual or monthly) membership period and charging consumers' accounts for the renewals when the renewals were not actually ordered or requested by the members, and without the advance consent of the consumers; failed to use adequate notices on third-party billing statements sent to consumers regardless of the method of enrollment in Defendants' membership program; and, failed or refused to remove unauthorized charges from consumers' accounts.

Settlement: **\$250,000.**

Homeownership Preservation Program –
KeepYourHomeNewMexico.org
Hotline 1-855-664-6630

The New Mexico Attorney General's Homeownership Preservation Program (KeepYourHomeNewMexico) is an unprecedented effort in New Mexico to assist homeowners who face mortgage delinquency or foreclosure. This coordinated effort provides a single toll free number entry point for homeowners who are screened and directed to the proper housing counseling or foreclosure legal help. The AG is also dedicating resources to aggressively pursue individuals and companies that prey on vulnerable homeowners through loan modification and real estate scams.

Consumer relief from the National Mortgage Settlement to NM homeowners for principal reduction, interest rate reduction, loan modifications, and other efforts: **\$103,655,642**

(HPP funded services)-

- Expansion of NMAG enforcement actions in the mortgage arena.
- Ongoing monitoring of compliance with the National Mortgage Settlement servicing standards for foreclosure proceedings and loan modifications. Periodic meetings with targeted servicers (i.e. Bank of America) to identify ongoing problems with compliance and negotiate resolution of these problems. These efforts have increased the number of favorable resolutions for homeowners facing foreclosures in New Mexico.
- Monitoring reports of unlicensed practice of law and initiating actions against out of state law firms who target New Mexico residents in need for foreclosure assistance while charging up-front fees in violation of NM law and without being licensed to practice law in NM.
- Review of consumer complaints for loan modification scams and initiation of investigations and enforcement actions to seek restitution for consumers and cessation of conduct.
- Assurance of Discontinuance entered and settlement reached with out-of-state law firm that ran deceptive radio ads soliciting homeowners facing foreclosure in violation of NM laws. Immediate cessation of radio ads after NMAG intervention.

(Housing Counseling Services)- Provides foreclosure certified housing counselors who are available to assist New Mexico homeowner statewide.

(Legal Defense for foreclosure cases)- Provides legal services attorneys to provide direct legal representation.

(Community Outreach and Education) Prevention resources.

(Housing and Foreclosure Website)- Website for homeowners information on statewide housing and foreclosure services and how they can access that help.

(Court Foreclosure Facilitation Pilot Project)-

In addition, the New Mexico Homeownership Preservation Program, the Administrative Office, the Second Judicial District Court, and the Thirteenth Judicial District Court have developed a Foreclosure Settlement Facilitation Pilot Project which will be implemented in the fall of 2014. This Pilot Project will provide the opportunity for banks and the homeowners to explore viable alternatives to foreclosure and loss of the home. The project will also identify loss mitigation strategies such as short sales, deeds in lieu, or “cash for keys,” which can be better options rather than a lengthy court foreclosure process.

(Charitable Organizations Unit)- Continues to work with the public to enforce the Charitable Solicitations Act registration and reporting requirements through use of the New Mexico Charitable Organization Registration Online System electronic registration system. There are now more than 6,000 distinct charitable organizations represented in the system. The unit takes requests for assistance with registration and reporting issues via telephone and e-mail with a response time of two business days or less. Documents uploaded to NMCOROS as part of their registration and reporting requirements are immediately available to the public in PDF form as part of the charities search feature.

The unit has initiated an outreach and education program to provide information to charitable organizations throughout the state regarding registration requirements, reporting requirements and compliance with New Mexico law.

It also continues to lead the current multistate action against charitable fraud in collaboration with the Federal Trade Commission and 45 other states’ Attorneys General. The multistate action has required coordination and review of more than 30 GB of documents and data. Pre-litigation discovery was initiated under the authority of the FTC and is ongoing.

This multistate effort has also led to a marked increase of national attention by CNN and other media to common fraudulent activities in the charities arena, such as abusive use of ‘Gifts in Kind’ to inflate charity reporting numbers and obfuscate fundraising and overhead costs.

LOOKING AHEAD

The staff of the division will continue efforts in successful dispute resolution to assure that consumers and businesses can resolve disputes efficiently and economically; to advance the compliance process for charities subject to New Mexico law and enhance enforcement efforts where violations have occurred; to litigate by targeting deceptive, unfair or unconscionable practices throughout the marketplace to protect consumers, enforcing New Mexico law, preventing future violations, recovering restitution for consumers, and, improving fair dealing in consumer transactions. The division is also committed to working with other state agencies and interested parties to respond to problems of predatory lending, the impact of mortgage foreclosures, ongoing sharp dealings by some businesses that use deceptive practices to gain unfair and illegal advantages over consumers, and fraudulent charitable solicitations. The division will continue its outreach and education focus because experience shows that knowledgeable consumers help level the marketplace playing field.

CRIMINAL APPEALS DIVISION

Director: *Margaret McLean*

VISION

The Criminal Appeals Division (CA) represents New Mexico in state district courts, New Mexico Court of Appeals, New Mexico Supreme Court, United States District Court for the District of New Mexico, United States Court of Appeals for the Tenth Circuit, and United States Supreme Court. The duties and responsibilities of the division are mandatory and the division is a core function of the Attorney General's Office. See NMSA 1978, Section 8-5-2 (1975).

The division director carries a full caseload of state and federal cases in addition to the management of the division. Case assignments generally occur every two weeks; the case assignments memorandum is submitted to the Attorney General and Chief Deputy Attorney General, with the specific assignments as well as an update on all relevant topics involving the division. The staff serves in Santa Fe and Albuquerque.

During 2013, for various reasons, staffing decreased while the workload increased. One division paralegal in the Albuquerque AGO primarily provides support for all state and federal habeas corpus proceedings. One Santa Fe AGO administrative assistant is responsible for all direct appeals.

Each attorney manages an intense and large workload with an average assignment of four briefs and other projects. Time and case management skills are essential because of the volume, the complexity of the issues, research, and the need to review the record. Because of the caseload and staffing, both the New Mexico Court of Appeals and the New Mexico Supreme Court have accommodated the need for extensions of deadlines.

The tenure of the attorneys ranges from less than one year to more than 25 years of criminal appellate practice. Attorneys possess expertise in juvenile cases, death penalty cases (two inmates remain on death row), DWI cases, and sexual assault appeals. The division also provides support and advice through a long-standing and established liaison program to the district

attorneys in the thirteen judicial districts throughout New Mexico. The division counsels and advises other AGO divisions including Litigation, Governmental Accountability, Prosecutions, Medicaid Fraud, and Border Violence. The specialized knowledge and proficiency about criminal law, appellate law, and writ proceedings are distinctive to the Criminal Appeals Division. Another function is to provide notice as required by the Victims of Crime Act, NMSA 1978, Section 31-26-1 (1994). This notice is provided by the victim advocate.

The division is staffed with one division director, 15 staff attorneys, and two support staff. A victim advocate is part of the division on an as needed basis, specifically to arrange for the attendance of any victim(s) and/or family members for oral arguments. The advocate reports directly to the Border Violence Division Director.

YEAR IN REVIEW

The Just Conviction and Exoneration Unit continued the case review and response for any claims of actual innocence and requests for post-conviction DNA testing. The three members of this unit are Nicole Beder, James Grayson, and Margaret McLean. A memorandum of understanding was obtained from all district attorneys.

In 2013, another specialized unit within the division was created. This unit handles all DNA expungement requests, as provided by statute. This unit is comprised of Margaret McLean, Sri Mullis, Anne Kelly, Pranava Upadrashta, and Jacqueline Medina. The requests for DNA expungement review have increased due to the expansion of Katie's law to cover all felony arrestees.

One highlight of the year was the resolution of the first-degree murder prosecution and federal habeas corpus review in *Case v. Hatch*. Following a brutal murder in 1982 in Carlsbad, NM, this proceeding was reviewed in state district court, New Mexico Supreme Court, federal district court, U.S. Court of Appeals for the Tenth Circuit, and U.S. Supreme Court. The Tenth Circuit reversed the granting of a writ in *Case v. Hatch*, 731 F.3d 1015 (10th Cir.), cert. denied, 134 S. Ct. 269 (2013). A petition for a writ of *certiorari* was filed and denied in *New Mexico v. Navarette*, 134

S. Ct. 64 (2013). This petition was filed challenging the Confrontation Clause analysis by the New Mexico Supreme Court regarding evidence involving an autopsy report in a first-degree murder case.

Another significant win was the conclusion of the direct appeal in *State of New Mexico v. Wayne Bent*. Defendant Bent was unsuccessful in his appeal of convictions for the sexual assault of two minor females that were defended as acts of religious practice and devotion. As of December 15, 2013, **52** federal cases have been reported and **203** state appellate cases have been reported.

Consistent with the mandates of the division, CA prepared and filed briefs and memoranda in the New Mexico appellate courts. In the New Mexico Supreme Court, petitions for writ of *certiorari* and responses were filed for Rule 12-501 NMRA and Rule 12-502 cases. Interlocutory appeals are also part of the work of the division. Oral arguments took place in the New Mexico Court of Appeals and New Mexico Supreme Court. During the 2013 60 day session of the New Mexico Legislature, the division performed bill analysis for proposals involving criminal law. Cooperation with the Governor's Office included review of extraditions and renditions.

Miscellaneous activities, primarily completed by the division director, include responses and cooperation with the National Association of Attorneys General re: survey of laws, requests for participation in amicus filings, and other inquiries; responses to public records requests; and responses to correspondence and letters of inquiry by inmates and private citizens.

Similar to the direct appeal practice, state habeas corpus and federal habeas corpus proceedings are numerous and varied. Mark Lovato prepared and filed responses and appeared at evidentiary hearings for challenges to conditions of confinement. Federal habeas corpus practice required the filing of answers, supplemental briefs, lodging of records, and Tenth Circuit briefs.

Jane Bernstein attended a NAAG training focused on federal habeas corpus law in Little Rock, Arkansas. Attorneys of the division served on the DNA Oversight Committee, the Rules of Appellate Procedure Committee, and the State Habeas Corpus Working Committee. Margaret

McLean participated in the statewide district attorneys conference in the spring and fall of 2013, at the Second Judicial District Attorney's June Jubilee Conference, and provided updates on specialized areas of the law. During November 2013, Joel Jacobsen spoke at the Midwest Children's Resource Center on "Crawford and the Prosecution of Child Abuse"; this seminar was presented to twelve (12) states. In June 2013, Joel Jacobsen presented a "Constitutional Law Update" for the National District Attorneys Association in San Diego, California.

LOOKING AHEAD

In 2014, as in all previous years, the hardworking members of the Criminal Appeals Division will continue to ably and competently represent the interests of the State of New Mexico in all criminal appeals and habeas proceedings. This task involves ethical and professional judgment and discretion. It is the day-to-day work, the mandatory deadlines, and the perseverance and determination to offer timely and quality legal representation by each member of the division that are the hallmarks of the division. Attorneys work independently, efficiently, and constructively to meet deadlines.

Other activities will include appearances for oral arguments at high schools throughout New Mexico as part of the education program developed by the New Mexico Court of Appeals. Public service to the criminal justice system and the community will continue through participation on various committees and cooperation with other law enforcement and related agencies.

One challenge is to the right of an appeal and the jurisdiction of the New Mexico Court of Appeals in Metropolitan Court (Albuquerque) cases. For those defendants, the current system provides for two direct reviews of a conviction in Metropolitan Court. The division seeks clarification of this issue from the New Mexico Supreme Court, especially given the extensive state resources devoted to this process. Corinna Laszlo-Henry is the lead attorney on this issue and is maintaining the list of all related cases and appeals.

Victoria Wilson will appear in the New Mexico Supreme Court early next year to argue *State of New Mexico v. Martin Ramirez*. This *certiorari* proceeding is important regarding the retroactivity

of a United States Supreme Court case in New Mexico and regarding the consequences of a conviction on immigration and naturalization.

The working relationships with the appellate courts will continue to evolve and expand. Systems have been developed and will remain in place to track appeals by the State of New Mexico and coordinate

the receipt and delivery of pleadings, records, and orders. The liaison program will provide advice to prosecutors and valuable updates on criminal law. Ongoing cooperation will take place with other divisions to ensure a comprehensive and consistent approach to legal issues and analysis for the Attorney General.





GOVERNMENT ACCOUNTABILITY DIVISION

Director: *Chris Lackmann*



VISION

Public corruption has always threatened government and its credibility with citizens. Attorney General King is committed to protecting the people of New Mexico from corruption and abuses in government. As part of this dedication, the mission of the Government Accountability Division (GA) is to attack corruption and work to ensure that state government serves all New Mexicans.

YEAR IN REVIEW

GA collaborates with other state and local law enforcement agencies, as well as the IRS, FBI, and U.S. Secret Service. GA furnishes trainers under a Memo of Understanding with the U.S. State Department's Bureau of International Narcotics and Law Enforcement in an international anti-corruption outreach effort. GA also represents the Attorney General's Office in the multi-jurisdictional Public Corruption Working Group.

GA/Prosecutions/Investigations Intake & Complaint Review:

The Attorney General's Office routinely receives possible criminal complaints from other governmental agencies and employees, as well as the general public. During the past

year, together with the Prosecutions and Investigations divisions, GA reviewed **574** formal written complaints of potential criminal activity.

After an initial triage process, GA spends a great deal of its effort investigating and reviewing allegations of criminal conduct, including violations of the Governmental Conduct Act, securities and tax laws, Campaign Reporting Act, grand jury law, and more traditional criminal laws. Many of these cases concern areas of law not typically associated with criminal charges such as the state Procurement Code, Per Diem & Mileage Act, Public School Finance Act, conduct of political activity on public time, and accountancy and other violations. The AGO takes all allegations of criminal conduct seriously. GA reviews each complaint fully and objectively. The goal is to completely investigate each allegation to determine whether a crime has been committed. Over the past year, GA has processed **36** inquiries/investigations, some of which have been concluded and some of which are on-going. Due to the sensitive nature of the matters and persons being investigated, the details cannot be described here.

Government Accountability Division case examples in 2013

Andrew Torres:

Torres was convicted of robbery, false imprisonment, and tampering with evidence in 2004, and sentenced to 34 years in prison. After an unsuccessful direct appeal and a *pro se habeas corpus* proceeding, he filed another *habeas corpus* petition. GA is representing the state due to the district court's determination that the 8th District Attorney's office has a conflict of interest. Torres has prior felony convictions, including a prior conviction for armed robbery. His victim in this case was 83 at the time of the offense, and has since passed away.

Shaun Anaya:

Anaya, engaged in a scheme to "rent" vacant homes, pled guilty to 12 felony charges, admitted one prior conviction, and was sentenced to 10 years imprisonment. Six years of that sentence was suspended, and when Anaya is released from custody he will be on parole and supervised

probation for five years. He was also ordered to pay restitution.

Thomas Garza:

Former Mora County Sheriff Thomas Garza was charged by GA for crimes committed while purporting to be in the discharge of his duties, including soliciting Deputies under his command to file false police reports. In his agreement with GA, Garza resigned from office, surrendered his certification as a law enforcement officer, and agreed to never again seek certification. He will be on probation for 364 days.

Virginia Guzman/MVD Roadrunner Registration:

Guzman, the owner and operator of MVD Roadrunner Registration, an MVD contract title and license supplier, pled guilty to six counts of tax evasion and was sentenced to six years in prison, five years of that sentence was suspended. After she is released from custody, Guzman will be placed on supervised probation and ordered to pay restitution.

Joy Ansley and Christopher Valdez:

The AGO, through it's GA Division, filed charges of fraud, making or permitting false public voucher, and conspiracy, against Torrance County Manager Joy Ansley and a contractor, Christopher Valdez. A four day preliminary hearing was held on November 18-21, 2013, and closing arguments made in writing pursuant to court order.

Secretary of State/Help America Vote Act:

In the federal case resulting from the AGO investigation, Elizabeth Kupfer was sentenced to 30 months in prison, while Joseph Kupfer and Armando Gutierrez were each sentenced to 120 months in prison. The defendants were also ordered to pay just over **\$2,500,000** in restitution to New Mexico. The state charges against Joseph Kupfer, and Armando Gutierrez, were prosecuted by the 2nd District Attorney's office, but paid for by the Attorney General's Office.

Region 3 Housing Authority:

Defendants Vincent "Smiley" Gallegos, Dennis Kennedy, Robert Strumor, and David Hernandez are charged with various felonies in two separate but related cases. GA has asked on, 15 separate occasions, for trial settings in these cases. The last delay was due to health issues involving one

of the defendants. A trial is now set for May 2014, and a status hearing is set for February 2014.

LOOKING AHEAD

The Government Accountability Division expects to continue successful fulfillment of its stated mission in the year ahead.



INVESTIGATIONS DIVISION

Director: *Earl Holmes*



VISION

The New Mexico Attorney General's Office Investigations Division provides highly experienced Special Agents to conduct major criminal investigations throughout the state and assists district attorneys offices and local law enforcement agencies in complex and multi-jurisdictional investigations. Many cases involve local conflicts of interest.

The division investigates criminal inquiries and cases including violent crimes, property crimes, and a wide range of other criminal activities. It specializes in investigating economic crimes and multi-jurisdictional crimes--working in cooperation with local, state, and federal agencies to ensure that all investigative avenues are utilized to facilitate successful prosecution.

YEAR IN REVIEW

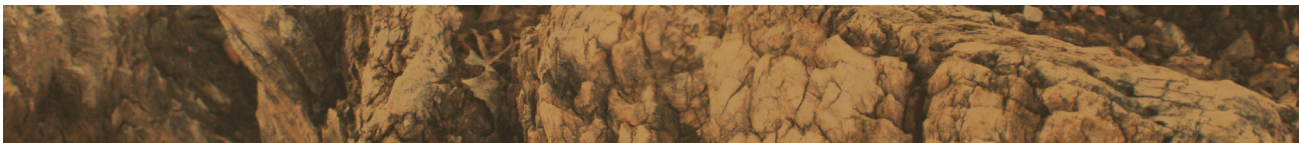
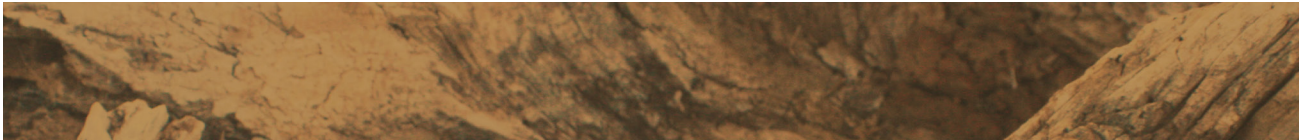
The AGO's Investigations Division is currently staffed with four Special Agents and two administrative assistants. In FY13, the division received and reviewed a total of **709** inquiries. **329** of those inquiries were assigned for further review. **58** evolved into investigative cases while a total of approximately **271** were closed. Special Agents carry large caseloads and work closely with AGO attorneys on indicted cases.

They assist with subpoena service and a variety of other trial support duties. Special Agents also assisted other AGO divisions throughout the last year.

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 Investigations Division will continually strive toward improving the investigative capabilities of the New Mexico Attorney General's Office during 2014 by fine-tuning many of the changes that have been made over the past year, such as:

- **Increased effectiveness**
- **Improved investigative product**
- **More comprehensive investigations**
- **Integration of the Governmental Conduct Act as it relates to joint investigations with local law enforcement agencies**



LITIGATION DIVISION

Director: *Scott Fuqua*



VISION

In a broad sense, the Litigation Division performs two basic functions. The first is the representation of the State of New Mexico in all of its non-tort claim civil litigation (the Risk Management Division typically provides a defense in tort cases, though the Attorney General's Office does sometimes handle tort cases as well). This civil litigation consists primarily of defending the constitutionality of New Mexico's legislative and regulatory enactments and of civil enforcement of various legal mandates. It also includes representation of the judiciary in original writ proceedings initiated in the New Mexico Supreme Court. The second function of the Litigation Division is to prosecute on behalf of the several professional licensing boards in New Mexico. Those prosecutions entail disciplinary action taken against licensed professionals for violations of the Uniform Licensing Act and the regulations adopted by each of those licensing boards. The division provides such prosecutorial services for every professional licensing board in New Mexico with the exceptions of the State Bar, the Medical Board, and the Nursing Board.

YEAR IN REVIEW

This year, as in years past, the Litigation Division successfully prosecuted hundreds of professional licensing cases. Each of those cases represents

critical assistance to the Regulation and Licensing Division of its core mission to protect New Mexico citizens from the unscrupulous (or worse) practices of licensed professionals in the State. Division attorneys handled the bulk of that caseload, which resulted in the payment to the State of tens of thousands of dollars in fines and other disciplinary action, including the revocation of licenses held by the most egregious offenders.

In 2013, the Litigation Division also arbitrated New Mexico's compliance with the Master Settlement Agreement, the landmark 1998 settlement agreement between the nation's largest tobacco manufacturers and 52 states and territories. That arbitration concerned the adequacy of New Mexico's efforts to "diligently enforce" our tobacco escrow statute in the year 2003. That statute requires those tobacco companies that did not participate in the Master Settlement Agreement to make payments into an escrow account for the benefit of the State that mirror the payments made to the State by those tobacco companies that did participate in the MSA. The arbitration represented the single-largest arbitration proceeding in the history of American jurisprudence, involving 35 states and several major tobacco companies, and preparation for the arbitration (as well as conducting the arbitration itself) required a substantial portion of the resources in the Litigation Division. Though the arbitration panel determined that New Mexico had not diligently enforced its escrow statute in 2003, the panel also determined that those enforcement efforts need not focus on tobacco sales occurring on Native American land. This finding is important because of what it means for New Mexico's escrow enforcement in each succeeding year; most of the tobacco sales in New Mexico that would otherwise be subject to escrow enforcement occur on Native American land.

Assistant Attorney General Rebecca Parish ran the Attorney General's tobacco escrow enforcement litigation, handling several lawsuits against those tobacco manufacturers who failed to pay the escrow required by law. Those lawsuits remain pending.

Assistant Attorney General Ari Biernoff is representing the State in litigation concerning the decision of Valley Meat Company to begin horse slaughter operations in 2014. That litigation is pending. He also represents State interests in road access to State trust lands used by New Mexican citizens for recreational purposes.

That litigation is also pending.

Assistant Attorney General Jim Jacobsen continued his representation of the State and its agencies as creditors in bankruptcy litigation all across the country. He successfully handled hundreds of bankruptcy matters in addition to serving a second term as the president of the States' Association of Bankruptcy Attorneys, a nationwide organization consisting of those attorneys who represent their states as creditors in bankruptcy actions.

Assistant Attorney General Seth Cohen represented the State in actions filed pursuant to the Fraud Against Taxpayers Act. As the leading *qui tam* attorney in the State, Mr. Cohen handled matters that, for the first time since the Act's passage in 2007, returned funds to the State coffers. Mr. Cohen settled a claim against Chevron concerning fraudulent insurance payments made by the State to Chevron for the costs of environmental cleanup of stations selling Chevron gasoline. Mr. Cohen also represented the State in several claims brought under the Unfair Practices Act against pharmaceutical manufacturers, including a **\$24 million** settlement with GlaxoSmithKline, the maker of Avandia.

Assistant Attorney General Nick Sydow represented the Secretary of State in an action concerning the constitutionality of the deadline New Mexico imposes on minor political parties to submit the petition signatures required for the certification of that party. He also represented Judge Nan Nash in an action concerning the ability of the State of New Mexico to adjudicate personal injury claims arising from conduct occurring on Native American land. That litigation, on appeal to the Tenth Circuit Court of Appeals, is pending.

In addition to her licensing prosecution work, Assistant Attorney General Cholla Khoury represents the Department of Public Safety in a lawsuit challenging the constitutionality of New Mexico's statutory scheme limiting the issuance of concealed handgun permits to citizens of the State. The litigation is currently pending.

Assistant Attorney General Sally Galanter, who also prosecutes on behalf of several professional licensing boards, represents the New Mexico Racing Commission and several individual former commissioners in litigation concerning the role played by the Commission in the payment of the purse to the winner of the 2008 All-American Futurity, the richest quarter horse race in the country. The litigation is pending.

Assistant Attorney General Scott Fuqua represented judges from nearly every judicial district in various original jurisdiction proceedings before the New Mexico Supreme Court. He represented the State and Judge Alan Malott in separate actions concerning the constitutionality of New Mexico's prohibition on same-sex marriage (Judge Malott had found that prohibition unconstitutional, a result affirmed by the Supreme Court). He also successfully represented the Educational Retirement Board in its defense of the constitutionality of SB 115 (passed in the 2013 session), which reduced the amount of the cost of living adjustment paid to State retirees. Mr. Fuqua was also involved in several cases brought against State agencies under the Inspection of Public Records Act, including the successful defense of the Human Services Department and the Attorney General's Office in separate actions concerning the application of the law enforcement exception to an audit report performed by a contractor of the Human Services Department concerning several mental health providers in New Mexico. Mr. Fuqua represented the Attorney General's Office and the Second Judicial District Attorney's Office in litigation challenging the constitutionality of New Mexico's criminalization of assisted suicide. That litigation is pending. Finally, Mr. Fuqua continues to represent the State Investment Council in its efforts to recover losses sustained by the pay-to-play conduct of investment professionals with which the Council did business. Those efforts, which are ongoing, have resulted in several settlements totaling approximately **\$20.5 million** to date.

LOOKING AHEAD

In 2014, the Litigation Division will continue its efforts to aid New Mexico's professional licensing boards in fulfilling their core mission of protecting the public from the illegal and harmful actions of licensed professionals in the State. The division will continue to represent the State in those bankruptcy actions in which the State is a creditor, protecting the State's financial interests in actions across the country. The division will also continue its civil enforcement efforts of New Mexico law to protect the interests of the State and its citizens. Finally, the Litigation Division will continue to represent the interests of the State and its instrumentalities in litigation that targets the constitutionality of the duly-enacted laws of the State.

MEDICAID FRAUD & ELDER ABUSE DIVISION

Director: *Jody Curran*



VISION

The Medicaid Fraud and Elder Abuse Division (MFEAD) is the Medicaid Fraud Control Unit for the State of New Mexico. Pursuant to Section 42 U.S.C. 1396b(q) of the Social Security Act, MFEAD is vested with the responsibility for the investigation and prosecution of all applicable state laws regarding any aspect of fraud in connection with the provision of medical assistance, and for reviewing and acting upon all complaints regarding abuse, mistreatment or neglect of patients of health care facilities that receive payments under public medical assistance programs.

The division strives to be New Mexico's leader in ensuring the integrity of the Medicaid program by protecting residents in Medicaid-funded facilities from abuse and neglect, and healthcare resources from fraud through investigation, prosecution, and prevention efforts.

YEAR IN REVIEW

During calendar year 2013, MFEAD's criminal prosecutions secured seven indictments and nine convictions. Additionally, eight individuals were sentenced, resulting in probation and contributing toward cumulative restitution of **\$30,471.52**.

MFEAD conducts criminal investigations into two general areas of criminal conduct: (1) allegations of fraud committed by Medicaid providers, and (2), physical and psychological abuse and neglect of residents. One type of investigation which MFEAD faces regularly involves improper billing by home health care providers. These home health care workers may be paid through Medicaid to provide a certain number of hours per week or month to assist an elderly or disabled individual in performing activities of daily living, such as cooking and housework. Often times a MFEAD investigation reveals that these home health care workers are not working the hours they claim. Common scenarios include: (A) A home health care worker has another job during which he/she has submitted a timesheet for the exact times that he/she is supposed to be working as a home health aide, or (B) Either the home health aide, or the recipient of the services is incarcerated during the times when the home health worker claims to be providing a service.

Pursuit of this kind of fraud is critical for two main reasons. First, this type of situation is common and these perpetrators are collectively draining significant funds from the Medicaid system. Prosecution of these cases provides a deterrent effect on the industry in general, and specifically prevents any convicted individual from receiving Medicaid funds (or any funds from any federally-funded program) for at least five years from their conviction. Secondly, although this type of conduct is generally charged and prosecuted as fraud, the underlying effect when an individual falsely reports the time they are being paid to assist the elderly and disabled, is that those vulnerable clients are not receiving any actual services. Such individuals are in need of assistance and more easily preyed upon than the general population, making them ideal targets for this type of fraud. In prosecuting these kinds of cases, MFEAD is protecting the Medicaid system and its vulnerable recipients.

Regarding civil prosecutions, the MFEAD secured **27** civil actions, which resulted in **\$2.88 million** in recoveries ordered. Medicaid program recoveries are returned to the New Mexico Human Services Department to ensure that the funds are credited exclusively to, and available for expenditure under, the Medicaid program.

Primarily through MFEAD's participation in the National Association of Medicaid Fraud Control Units, MFEAD participated in **12** national settlements which identified more than **\$2.6 million** in recoveries for the State. In other civil settlements with Medicaid providers, investigations disclosed Medicaid payments for multiple claims, lack of documentation, and failure to comply with applicable Medicaid statutes and regulations specific to the types of services being provided.

LOOKING AHEAD

In support of its mission, the division is working to fill additional positions, which will provide greater flexibility in investigating and prosecuting fraud for the benefit of all New Mexico citizens. Additionally, the division anticipates introducing legislation which will enable the Unit to qualify for a larger percentage of monetary recoveries in civil actions filed under the Federal False Claims Act.



PROSECUTIONS DIVISION

Director: *Mary Helen Baber*



VISION

The Prosecutions Division prosecutes priority cases designated by Attorney General King, and serious felony offenses such as homicides, sex crimes, and crimes against children. This division places particular emphasis on Internet Crimes Against Children (ICAC), including possession and distribution of graphic child sexual abuse via electronic media. The division is increasing prosecution of Internet predators who solicit children for sex online and then arrange in-person meetings with the children.

YEAR IN REVIEW

2013 was one of the most productive years to date for the Prosecutions Division. The division had more than **100** active cases, up from nearly **80** the prior year, and only a handful of ICAC cases at the beginning of AG King's administration in 2007. There have been **34** final dispositions with most of the convicted child sexual abusers and electronic solicitation criminals being required to register as sex offenders. The division is actively pursuing two homicide cases; numerous child sexual abuse and physical abuse cases; and a number of white collar crime cases, including the Christus St. Vincent Hospital matter.

- K.I.V.A. Students Partnership with AGO
In September of 2013, the Prosecutions Division partnered with Santa Fe Public Schools Keeping Independent Values Alive (KIVA), a program to develop job skills for challenged young adults. The KIVA students undertook a massive 300,000

document project at the Santa Fe AGO which began with the destruction and shredding of duplicate and triplicate documents acquired in a 1999 legal case. The students recycled more than 117 notebooks and other expensive office supplies. To date, the students have shredded more than 58,500 pages, saving the AGO the cost of commercial shredder companies and preserving precious storage space. This program accomplished more in three months than any previous document control project in Prosecutions in the last few years. The program receives no funding and the division provides no extra staff or equipment. The KIVA partnership has cost the AGO approximately \$5.60 for student certificates for their job skills portfolios and resumes. The students were excited and proud to be partners with the Attorney General's Office. The program is expected to continue indefinitely.

- Prosecutions Division cases in 2013:

NM v. Monteith: Assistant AGs Shannon Murdock and Clara Moran successfully prosecuted this Internet child predator for soliciting sex with a person he believed to be a 13-year-old-girl. The 25-year-old defendant had posted an ad on social media entitled, "The Younger the Better." A citizen answered the ad with the intent to determine whether the ad was from a predator or whether the ad was a joke. It was not a joke. The defendant immediately sent an obscene photo to the citizen, and then started pushing to meet the "girl." The citizen became alarmed and contacted the police. A police officer, posing as a 13-year-old-girl, agreed to meet the defendant for sexual activity. The police team observed the defendant buying condoms moments before the scheduled meeting. The defendant had the condoms in his possession when he was arrested that same day. The case proceeded to jury trial. Two and one-half days of trial and approximately two hours of deliberations resulted in an Albuquerque jury convicting Anthony Monteith of two felony counts of soliciting a child for sexual acts. The defendant awaits sentencing.

NM v. Gurule, State v. Davis: This child sexual abuse case was charged when a grandmother, Davis, and her boyfriend, Gurule, were discovered by AG investigator Lois Kinch, to have taken sexually explicit photos of the granddaughter and the boyfriend. The defense argued that the photos discovered in a camera seized pursuant to search warrant should be suppressed. An Albuquerque district court judge suppressed the photos. The Court of Appeals upheld the district court. After

oral arguments by Assistant Attorney General James Grayson, the Supreme Court ruled in the state's favor. *UPDATE: On Jan 10, 2014, defendant Gurule pleaded guilty to multiple felonies, including 2 second degree felonies pursuant to a repeat offender plea and disposition agreement. He will serve 21 years with a potential of 72 years upon subsequent violation, and he will be required to register as a sex offender for the rest of his life.

NM v. Kenneth Carrejo: New Mexico prison guard Carrejo was indicted by AAG Trevor Rigler on four felony counts of criminal sexual penetration of a male inmate. The matter is pending trial. The defendant is no longer employed by the Department of Corrections.

NM v. Shoemaker: AGO Special Agent Lois Kinch caught the defendant in Grants NM, downloading sexually graphic photos of children. He was indicted by AGO prosecutor Clara Moran. He pleaded guilty to one count of sexual exploitation of children (manufacturing) and sexual exploitation of children (distribution), three felony counts. Sentencing is pending.

NM v. Harper: The defendant was caught by AGO investigators downloading sexually graphic photos of children. After charges were filed by prosecutors, the defendant pleaded no contest to three counts of sexual exploitation of children (manufacturing). Harper faces a minimum of five years in prison and lifetime sex offender registration.

NM v. Edgar Reyes: This was an undercover operation. Defendant responded to an ad and planned to meet a "12-year-old-girl" for sex. Police arrested him with condoms in his possession. Reyes was sentenced to one year in custody and to the S.T.O.P. sex offender program with a 10 year sex offender registration.

NM v. Abraham Baca: The defendant, an off-duty New Mexico State Police officer, was arrested by a Rio Arriba County Sheriff's deputy for DWI. At trial in the local Magistrate court, the judge directed a verdict prior to completion of the state's case. Prosecutor Donna Bevacqua-Young appealed the matter to the district court, which ruled in her favor. Baca appealed to the Court of Appeals which ruled in the defendant's favor on a double jeopardy issue. Bevacqua-Young pursued the matter and the New Mexico Supreme Court ultimately granted *certiorari*. The matter is pending oral argument in the NM Supreme Court.

LOOKING AHEAD

The Prosecutions Division, along with the statewide ICAC Task Force and effective collaboration with the Office of the United States Attorney for the District of New Mexico expects to apprehend and prosecute more child sexual predators in 2014. The division prosecutors expect more ICAC defendants to register as sex offenders, as a result of expanded registration requirements, and by enforcing compliance with federal laws.

In 2014, approximately two dozen cases are expected to proceed to initial hearings and are likely to proceed to hearing on those parolees scheduled for their second statutory hearing. Increased focus on sex offenders and society's attempts to hold convicted sex offenders accountable will result in exponential increases in the number of sex offender parole hearings in the next few years.



WATER, ENVIRONMENT, & UTILITIES DIVISION

Director: *Stephen Farris*



VISION

The Water, Environment, and Utilities Division (WEU) is charged with protecting New Mexico's scarce water resources and maintaining a healthy environment for the citizens of the state. Additionally, the division represents residential and small business consumers in matters before the Public Regulation Commission.

YEAR IN REVIEW

WEU intervened in the Copper Mine Rule proceeding before the Water Quality Control Commission. The Copper Mine Rule advanced by the New Mexico Environment Department proposed to turn back 36 years of groundwater quality protection in New Mexico by authorizing groundwater contamination above water quality standards underneath vast areas of copper mine sites. The Attorney General's Office intervened on the grounds that the proposed rule violated the New Mexico Water Quality Act. After an 11-day evidentiary hearing, an executive-appointed Commission approved the rule, and the Attorney General's Office has brought a direct appeal to the Court of Appeals. That appeal is pending.

In utility cases, as 2013 began, Southwestern Public Service Company (SPS), which provides service to 125,000 customers in eastern New

Mexico, filed a rate case at the Public Regulation Commission that would increase residential rates by 25%. After extended litigation over whether parts of the filing could be kept confidential from the public, the PRC ruled that the filing must be open to public inspection. The Attorney General's witnesses filed testimony opposing any increase and testified that SPS is over-earning and should receive a rate decrease. A hearing was held in September and the parties are awaiting a recommended decision.

In a case filed by the Attorney General against the New Mexico Gas Company, AG King requested that the PRC order the company not to disconnect about 500 customers in northwest New Mexico who receive their gas from gathering lines rather than the utility's distribution lines. The Commission's hearing examiner did not approve agreements among the Attorney General and other parties providing for connection of the customers, so the Attorney General is asking the Commission to order the gas utility to connect the customers directly to its gas distribution system.

During 2013, the Attorney General participated in several rulemakings, including reworking the Commission's efficiency and renewable rules, as well as intervening in efficiency and renewable procurement cases filed by each utility. In SPS's renewable case, the Attorney General opposed reallocation of millions of dollars of costs to

residential customers that should be paid by industrial and other large customers. Other cases in which the Attorney General represented residential customers included the treatment of the gain on SPS's sale of transmission assets; PNM's application to construct a small gas-fired generation station; El Paso Electric Company's application to contract for a 50 MW solar generating facility; and Public Service Company of New Mexico's application to abandon two units of San Juan Generating Station while continuing to collect its costs in rates.

WEU continues to represent the State of New Mexico in multistate litigation to protect our air resources. WEU represented the State in litigation against the U.S. Environmental Protection Agency (EPA) arguing for stronger air quality standards for particulate matter and in litigation in support of EPA's more stringent mercury and air toxics standards. Joining other states, the Attorney General's Office submitted comments to EPA in support of establishing standards for greenhouse gases for existing power plants.

In addition, attorneys for the division are defending the state in the Sanders-Reed public trust Green House Gas case. The State, joined with co-defendant, Governor Martinez, in filing a motion for summary judgment, which was granted. Plaintiffs have appealed to the New Mexico Court of Appeals, and the appeal is currently pending.

WEU was actively involved in the 2013 legislative session, preparing analyses on environmental legislation, testifying before legislative committees, and serving as "experts" in support of legislation to strengthen the enforcement provisions of the Oil and Gas Act and to expand the Natural Resources Trustee Act. The AGO is also requesting that the Attorney General and the PRC cooperate in development of legislation to transfer Consumer Advocate Staff from the PRC to the Attorney General.



LOOKING AHEAD

The division continues its involvement in the Middle Rio Grande Endangered Species Act Collaborative Program, its twin goals are to collaboratively recover the endangered Rio Grande silvery minnow and southwestern willow flycatcher, while also protecting existing and future uses of water. The Program is currently transitioning to operate as a Recovery Implementation Program.

WEU is actively involved in the natural resource damage assessment process for the Los Alamos National Laboratory site and the Quivera mining site, where Rio Algom Mining LLC mined uranium, representing the New Mexico Office of Natural Resources Trustee. This year, the Los Alamos Natural Resource Trustee Council issued a draft Assessment Plan for public comment. The draft plan will be finalized in early 2014, and the Council will proceed to prepare an assessment of natural resource damages for the site resulting from the release of hazardous substances.

