

NEW MEXICO ATTORNEY GENERAL
GARY K. KING

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ANNUAL REPORT

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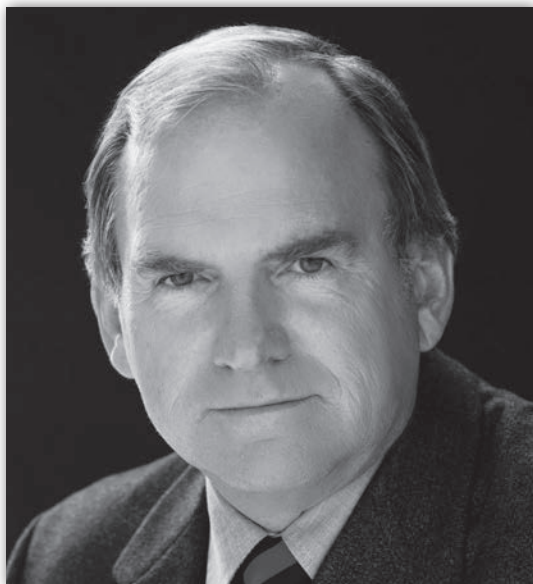
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MESSAGE FROM ATTORNEY GENERAL
GARY K. KING



2012 was the sixth year of my administration as New Mexico Attorney General. The Attorney General's Office was kept busy with legal cases that included: high profile criminal prosecutions; government corruption; administering the historic national mortgage foreclosure/fraud settlement; predatory lending and other consumer protection lawsuits; investigations into the devastating forest fires that plagued New Mexico; and, election irregularities. In this annual report to the Legislature, we have compiled a general accounting of activities from each of this agency's divisions.

Among the highlights is the AGO's role in the \$25-billion state-federal settlement with the nation's five largest mortgage servicers. New Mexico consumers will be the beneficiaries of direct relief and new protections as a result of collaborative efforts that included our Consumer Protection Division. My office has begun the Homeownership Preservation Program, a coordinated statewide effort to provide information and resources to New Mexico homeowners who are at risk of losing their homes to foreclosure. The Program provides homeowners:

- A toll-free Foreclosure Hotline
- Foreclosure Help website
- Housing counseling
- Legal advice and representation
- Community based outreach and education

My Government Accountability Division expects to present the State's evidence at trial this summer in the Region 3 Housing Authority government corruption case. Another high profile case handled by the GAD resulted in the removal of a Santa Fe police officer who was charged with stalking, harassment, and false imprisonment. The officer will never again become a certified law enforcement officer anywhere in the United States.

In 2012, we established a written Conflicts Policy for agency attorneys. The policy supplements the Attorney General's Code of Conduct. It discusses in more detail the conflicts of interest that affect lawyers in the AGO and procedures for handling those conflicts when they arise. These rules have been longstanding unofficial policy for the Attorney General's Office and are now part of AGO official policy.

We also recently created the Just Conviction & Exoneration Unit to assure justice and fairness in challenges to certain New Mexico homicide and sexual assault convictions. The new unit, created in response to widespread use of DNA testing to challenge these convictions, will operate within the AG's Criminal Appeals Division.

AGO staff continue to train hundreds of lawyers, law enforcement personnel, and others in a myriad of areas such as Internet crimes against children, DWI prosecution, human trafficking prevention, teen dating safety, and methamphetamine abuse prevention.

Attorney General's Office personnel have once again accomplished a great deal with a lot less in terms of reduced or flat budgetary appropriations. However, as always, we will continue finding ways to better serve the people of New Mexico. Thank you for your continued support as we all work toward good government in the year ahead.

Sincerely,

A stylized, handwritten signature of Gary K. King in black ink.

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 2012. 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 2013, 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.

This Office could not fulfill its responsibilities and commitments without the dedication 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.

2012



GENERAL COUNSEL *R. David Pederson*



Mr. 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 helps formulate and present the AG's legislative agenda before state lawmakers. He also manages complex major litigation; is a member of the criminal case intake evaluation triage team; supervises the AG's Animal Cruelty Task Force and coordinates Animal Welfare issues with outside agencies; and, he reviews agency "cold cases."

In the past year, Pederson completed an inventory of all pending trial level court cases being handled by the AGO; assisted in drafting a U.S. Supreme Court amicus brief submitted by AG King in support of the National Association of Attorneys General brief on Interstate Detainers; and, served as a liaison with state District Attorneys.

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 more than 34 years of legal practice, primarily in northwestern New Mexico, to the Attorney General's Office.

2012



CHIEF OF STAFF

Michelle Garcia



Chief of Staff Michelle Garcia 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. As a law enforcement officer, Chief of Staff Garcia represents the Attorney General on several law enforcement boards, including: Anti-terrorism Advisory Council; High Intensity Drug Trafficking Area; and Child Fatality Review Panel. She is also the 2013 Chair of the New Mexico Intimate Partner Violence Death Review Team. Chief of Staff Garcia brings a wealth of knowledge and experience to her duties as liaison to the states law enforcement community.

In 2012, with the guidance of Chief of Staff Garcia, the Attorney General's Office provided training to more than 400 adults and 3000 teens throughout New Mexico regarding the prevalence of teen dating violence within our communities. This audience included law enforcement, service providers, educators, advocates, court personnel, members of tribal communities, and students grades 6 - 12 across the state. The agency's effort with teens focused on healthy relationships and how to recognize the warning signs of dating violence. One important population that was reached was the pregnant and parenting teens that participated in the GRADS program statewide.

Presentations for those who work with adolescents focused on the dangers of teen dating violence and highlighting new trends, such as technological abuse and reproductive coercion. The office also assisted the communities of Espanola and Deming in creating teen dating violence awareness campaigns.

Under Chief of Staff Garcia's direction, the Office produced two courtroom guides for prosecutors and law enforcement that are directed toward sexual assault, domestic violence, and stalking cases. These guides were distributed to all District Attorney's offices throughout the state. The guides were designed to assist prosecutors build cases against Sexual Assault or Domestic Violence Offenders---from pre-trial interviews, to developing strategies when a victim cannot testify, to guidelines when sentencing the defendants. These guides have received positive reviews from Assistant District Attorneys across the state. This project gave birth to another courtroom guide to combat human trafficking by preparing a sound assessment of the problems of human trafficking and implementation of effective criminal justice strategies for law enforcement and prosecutors in order to hold traffickers and abusers accountable.

In 2013, Chief of Staff Garcia will begin working on the prescription drug abuse epidemic in our state. The Attorney General's Office, in collaboration with HIDTA will host a Prescription Drug Abuse Awareness Summit focusing on collaboration of federal, state, and local entities organizing against prescription drug abuse. The Attorney General's office continues to work with our communities on proper methods of prescription drug disposal to help keep New Mexican's safe from the hazards of dumping unused and unwanted medications. The AGO will continue outreach and education on how to keep our youth safe by organizing disposal events statewide. In the New Year, Ms. Garcia will continue to develop and support the priorities of Attorney General King.

2012



LEGISLATIVE TEAM

Phillip Baca, Stuart Bluestone, Victoria Bransford, R. David Pederson



The Attorney General's Legislative Team is composed of Stuart Bluestone, Phillip Baca, and Victoria Bransford, and has recently added former legislator and House Judiciary Committee Chair R. David Pederson. The team works closely under AG Gary King's leadership to advance his legislative agenda.

For the 2013 Legislative Session, Attorney General King has set a number of key priorities, including:

- Ethics and Campaign Finance Reforms, focusing on enhanced disclosure of campaign contributions and government contractor disclosures;
- DWI and Underage Drinking Prevention, including penalty increases and providing all local communities with the option of pursuing increased funding for alcohol and substance abuse;
- Domestic Violence law improvements, especially to protect victims;
- Criminal Law Enforcement initiatives, including penalty increases – especially for habitual offenders -- and more protections for the public, such as strengthening sex offender and human trafficking laws;
- Consumer Protection proposals, such as ensuring that mortgage foreclosure practice reforms protect innocent homeowners and adding effective homeowner protections to Public Improvement Districts ; 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 available recoveries.

2012



CONSTITUENT SERVICES

Coordinator: *Cordy Medina*



Cordy Medina, as Attorney General King's Constituent Services Coordinator, works to resolve issues and problems reported to the AGO by the general public. Ms. Medina received approximately 350 letters in 2012 asking for help on a wide range of constituent issues. She also receives 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 people also make in-person visits to her office to speak with Ms. Medina.

If a particular problem is of a legal nature and appropriate for the agency to handle, it is 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 this position 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 has become the "go to" person within the Attorney General's Office and for other state government agencies as well.



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 other services for the office. ASD is also responsible for financial management and the purchasing functions within the AGO in order for the agency to function properly. 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

In 2012, ASD continued to adjust budget resources to meet ever increasing demands in the business of the Attorney General's Office, including making difficult fiscal choices in order to utilize reserved funds to supplement shrinking appropriations from the General Fund. Where necessary, expenditures were reduced and in other cases, resources increased to meet the demand 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 limited budget.

LOOKING AHEAD

In 2013, the Administrative Services Division expects to continue doing more with less. Through continuing difficult economic times and continued strained state budgets and federal funding, ASD remains committed to providing creative but sound solutions so that AGO personnel and their respective divisions can continue their important work. ASD's continuing goal is to provide the necessary financial guidance and management assistance for the Attorney General to accomplish his statutory responsibilities and committed service to the people and government of New Mexico.

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BORDER VIOLENCE DIVISION

Director: *Maria Sanchez-Gagne*



VISION

The Attorney General's Office Border Violence Division (BVD) was established in 2005 for the purpose of focusing on international extraditions and foreign prosecutions. The BVD has since expanded and now also investigates and prosecutes human trafficking and money laundering cases. The BVD provides specialized legal and technical assistance as well as training to local, state, and federal law enforcement agencies throughout New Mexico in these areas. The BVD also provides trainings pertaining to human trafficking for Mexican law enforcement and prosecutors.

YEAR IN REVIEW

• **Human Trafficking Cases**

BVD is currently prosecuting seven individuals in Bernalillo County on human trafficking and other related charges. Two were fugitives who were arrested and extradited back to New Mexico after their stories were aired on America's Most Wanted television program. All individuals are currently awaiting trial.

• **International Extraditions**

BVD is currently working with the US State Department in Washington, D.C. and Mexico on seven Provisional Arrest Warrant Requests. On November 27, 2012, New Mexico fugitive Ramon Loya Jr. was apprehended by Mexican law enforcement on the Provisional Arrest Warrant requested by the BVD. Loya faces charges of First Degree Murder, among several other charges, in Bernalillo County. In December 2012, the BVD submitted the final extradition packet to Mexico. The State is awaiting Loya's extradition by Mexican officials which will return him to New Mexico to face trial. Loya was a fugitive from justice for 4 years. Also in 2012, federal law enforcement partners and BVD collaborated to apprehend and extradite fugitive Noe Torres from Mexico. The accused killer was a fugitive from justice for more than six years.

• **Money Laundering**

BVD's New Mexico Anti-Money Laundering Strike Team (NMAMLST) has had 55 cases referred for investigation. These cases include illegal firearms importation, high-dollar money laundering operations, and human and narcotics trafficking operations. On May 22, 2012, seven individuals who were members of a racketeering, money laundering, and narcotics trafficking operation were indicted. They are currently being prosecuted in conjunction with the Twelfth Judicial District Attorney's Office in Alamogordo. Approximately 45 cases are still in the investigatory phase.

• **2012 Human Trafficking Trainings**

BVD provided eight trainings to local law enforcement and victim services providers.

• **2012 Money Laundering Trainings**

BVD's NMAMLST sponsored two money laundering conferences, one was conducted in Albuquerque and the other in Las Cruces. The training was a three-day Introduction to Money-Laundering Investigations course to law enforcement investigators and prosecutors from across the state. NMAMLST has also presented four seminars to prosecutors and law enforcement on the current status of the proper compliance with the New Mexico Forfeiture Act. Additionally, NMAMLST has conducted significant outreach to establish relationships with various investigating

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agencies across the state, including four of the various High Intensity Drug Trafficking Areas (HIDTA) regional task forces, eight sheriff's departments, numerous local police departments, eight District Attorney's Offices, the Regulation and Licensing Division of the Tax & Revenue Department, the New Mexico Sheriffs' and Police Association, and the New Mexico District Attorney's Association, to inform them about the resources available through the NMAMLST.

LOOKING AHEAD

BVD expects to continue providing human trafficking training and awareness to law enforcement, social service providers, victim services providers, and the general public; increase investigations and prosecutions pertaining to crimes involving human trafficking; and, continue to 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 IERs by continuing to provide awareness trainings to law enforcement and prosecutors.

BVD will continue outreach and training in an effort to construct a statewide infrastructure for the investigation of money laundering cases--additional trainings on seizures and forfeitures are already scheduled. BVD trainings for state and local law enforcement on basic money laundering investigations will also be a priority. The Border Violence Division plans to coordinate, draft, and present proposed legislative changes aimed at assisting in the investigation and prosecution of money laundering and money laundering-related offenses.



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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 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 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 the certain provisions of the Governmental Conduct Act, answering writs of garnishment that seek to attach state employee wages, and issuing approving opinions for school district general obligation bond issues.

YEAR IN REVIEW

The Civil 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 by Taos County against a decision by the Alcohol and Gaming Division to allow a liquor store; 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; and a challenge to rules promulgated by the Board of Chiropractic Examiners. The division acted as counsel to the Secretary of State and provided advice and guidance during the 2012 primary and general elections.

The Civil Division reviewed or investigated approximately 89 inquiries and complaints regarding the Open Meetings Act and Inspection of Public Records Act. The division resolved approximately 63 inquiries and complaints through informal resolutions and formal determinations. The remaining matters are still being reviewed or investigated.

The Attorney General's Office issued 10 advisory letters and seven formal opinions. Topics addressed included the use of the Health Insurance Alliance as New Mexico's health insurance exchange under the Patient Protection and Affordable Care Act; the automatic enrollment of students under the free or reduced lunch program; whether a municipality may propose a question on a statewide general election ballot; the distribution of land grant permanent funds in relation to the anti-donation clause of the New Mexico Constitution; the length of the term of office of an appointed probate judge; the eligibility of an out-of-state public housing authority to act as a housing authority in New Mexico; whether amnesty under Section 402 of the Streamlined Sales and Use Tax Agreement would violate the New Mexico Constitution; the legal implications of proposed PRC reforms; the financial responsibility for First Judicial courthouse furniture and equipment; whether a tribal college is a private college under the law; and whether employees and students of a community college can serve on the board of the college.

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As part of the AGO's outreach program, division attorneys conducted 11 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 phone call and email inquiries regarding the Open Meetings Act and the Inspection of Public Records Act on a daily basis. Questions came from government officials, members of the news media, and the general public.

The division published the seventh edition of the Attorney General's Inspection of Public Records Act Compliance Guide. The seventh edition contains substantial updates and modifications to reflect many recent changes to the law.

The division experienced a substantial increase in litigation in 2012, handling approximately 74 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; an ongoing challenge to Environmental Improvement Board regulations; appeals of multiple licensing decisions by the NM Racing Commission; a high-profile licensing decision by the Board of Funeral Services; 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 33 school district general obligation bonds issues totaling approximately \$150 million.

The Civil Division reviewed approximately 136 state agency contracts for legal sufficiency and/or compliance with the former state employee provisions of the Governmental Conduct Act.

The division processed 263 writs of garnishment involving creditor attachment of state employee wages.

During the 2012 Legislative Session, the Civil Division received, routed and administered 212 requests from the Legislative Finance Council and others for bill analyses. The Attorney General's Office completed 209 bill analyses, 40 percent 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 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 the timely resolution of complaints and will continue to provide statewide training to government agencies and the public.

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COMMUNICATIONS DIVISION

Director: *Phillip Sisneros*



VISION

The Communications Division responsibilities include writing and distributing agency news releases, media advisories, publications, and other public interface for the office. The division is also involved in education & outreach presentations on behalf of the AGO. Communications staff are responsible for design and content of the AGO's Website and work together with the information and technology staff to facilitate public access to AGO services using 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

An updated look and improved functionality of the AGO website was a major focus of the division in 2012. As new technologies emerge it is expected the website will be adjusted and improved accordingly.

Federal funding ends in early 2013 for administration of Attorney General King's

Methamphetamine Project Initiative. However, the anti-meth Train the Trainer program developed by the Communications Division in conjunction with the program coordinator will continue as a featured part of the AGO's regular Education and Outreach functions. The instructive anti-meth presentation was designed specifically for volunteer trainers who then teach members of their home communities about the dangers of methamphetamine abuse.

The Train the Trainer presentation was given 19 times in locations across New Mexico last year; nearly 300 individuals attended the training sessions in 2012. The Train the Trainer program far exceeded the goals set forth in the U.S. Department of Justice establishing grant and the community volunteers who were trained will continue the anti-meth message for years to come.

The division also helped facilitate AGO Road Show presentations around the state in 2012. State, County, and Municipal government employees and others attended the "Sunshine Law" seminars presented by the AGO Civil Division staff. These seminars are designed to familiarize government employees and the general populace with the requirements set forth in the Inspection of Public Records Act (IPRA) and the Open Meetings Act (OMA).

The Communications Division provided public notification for seven Governmental Conduct Act seminars presented by the Office throughout New Mexico in 2012. The seminars, attended mostly by public employees, are designed to instruct public workers about recent updates to the law.

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Working with the AGO information and technology staff, a new online system was devised for delivering news releases, media advisories, and other AGO-related information to all media outlets.

Communications Division staffers presented a number of seminars on Internet Safety and Cyberbullying for school children and parent groups throughout the year.

Additionally, the division improved production and cost savings in printing and compilation of the many AGO brochures, booklets, and pamphlets by using in-house equipment and other resources.

LOOKING AHEAD

The Communications Division continues to explore new technologies to facilitate contact with the general public, other state agencies, and media outlets. One major planned project includes a revamping of the look and functionality of the Attorney General's Office website. This project should improve the ability of the Office to communicate important information to the public and other state agencies.

STOP TEEN DATING VIOLENCE



{ One in three teens and young adults experience some form of dating abuse. Learn the signs and start talking now about healthy relationships! }

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 market place. 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.

The Consumer Protection Division also includes the Charitable Organizations Unit. The unit acts on behalf of the public to protect the interest of donors to charitable organizations, the beneficiaries of those donations, and to ensure that each charity meets the obligations it has assumed under the public trust. The unit also enforces the provisions of the Charitable Solicitations Act, including registration and

reporting, investigation of complaints, and guidance to the general public to assure compliance with the law and to assist donors in making informed decisions.

YEAR IN REVIEW

Dispute Resolution and Outreach for Consumer Complaints:

- Recovered approximately 2.5 million dollars for consumers through dispute resolution
- Handled more than 20,000 consumer intake calls for dispute resolution, consumer protection information or referrals
- Number of new written complaints filed: 2,402
- Number of complaints closed: 2,667
- Presented 46 community outreach and education events to New Mexicans throughout the state on consumer protection issues.

Consumer Protection Enforcement actions examples:

• **State v. FastBucks, Filed June 2009.** Small loan lender making loans of 520% to 650 % using marketing practices that encourage rollovers and chain debt. Court Decision entered for the State finding Defendant loans and practices in violation of Unfair Practices Act under both substantive and procedural prongs of unconscionable practices provision. Court decision awarded restitution estimated at 20 million dollars to consumers. Fastbucks intends to appeal the decision and has also filed for Chapter 11 Bankruptcy in the State of Texas.

• **State v. Bank of America; State v. Citicorp; State v. Wells Fargo; State v. Ally/GMAC; and State v. JP Morgan Chase. Filed April 2012.** Multi-state action against five largest mortgage servicers resulting in enforcement of servicing standards to protect homeowners, 25 billion dollars in loan modifications, refinancing and payments to eligible homeowners, and allocation of 11 million dollars for housing counseling, hotline, legal defense and other assistance to New Mexico homeowners facing foreclosure.

• **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

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any settlement offer. Judgment entered against Defendant and Attorney General awarded civil penalties of approximately 1.67 million dollars and restitution for all clients of the attorney. Proceedings on collection of judgment are pending and the case is on appeal by Defendant.

• **State v. Qadri al Masri; Filed Sept. 2, 2008; Oct. 27, 2009.** The original case was filed against Yousef Nassar, d/b/a, Santa Fe Indian Jewelry for selling jewelry misrepresented to have been designed or made by Calvin Begay, a Native American artist and jeweler. Subsequently NMAG filed suit against the person who was making the fraudulent jewelry. A stipulated preliminary injunction is in place and the remainder of the case is in discovery.

• **State v. Credit Arbitrators, Second Judicial District, Filed 2012.** Defendant is a debt settlement company that charges upfront 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 and discovery is ongoing.

• **State v. Commercial Products, Inc., d/b/a Lohman Motors and Lomas Auto Mall. Filed July 26, 2009.** Claim brought against floor planner (financer of inventory) that refused to transfer titles of motor vehicles to consumer/purchaser of the car after sale by dealer to consumer. After several years of litigation, case was settled in January 2012 and consumers received restitution and injunctive relief was awarded prohibiting Lohman Motors from withholding titles of motor vehicles placed in a dealer's inventory and sold to the public.

• **State v. B&B Investment, d/b/a Cash Loans Now and American Cash Loans, Filed June 2009.** Lawsuit against small loan lender making loans at 1200% to 1500% APR for unconscionable practices. 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 UPA. Restitution and penalties denied. Case appealed by Plaintiff and cross-appealed by Defendants.

• **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. Discovery is pending.

• **J. Edwards Diamonds of New Mexico and J. Edwards Distributing Company d/b/a Diamond Financial Services v. Attorney General Gary King Filed December 2009.** Attorney General initiated investigation for violations of UPA for deceptive pricing, charging of hidden interest fees, and deceptive and unfair jewelry leasing program. Company filed preemptive declaratory judgment lawsuit. AG countersued. Partial Stipulated Consent Decree (filed 8/28/12) with injunctive relief prohibiting use of leasing program and other practices and payment of \$135,000.

• **State v. Turning Point Mortgage Planning, American Loan Processing et al., Filed July 31, 2012.** Lawsuit against company for misrepresentation of mortgage loan modification services. Defendants falsely claim they are mitigation and legal experts that modify mortgages. Defendants require payment of upfront fees before any services performed in violation of state and federal law. Case pending entry of default judgment.

• **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. Case pending entry of default judgment.

• **State v. Mickey Richesin d/b/a Lomas Auto Mall, Filed June 21, 2009** State is seeking to either pierce the corporate veil, or in the alternative, seek independent liability against the officer of Lomas Auto Mall, Mickey Richesin, for violations of the Unfair Practices Act by the corporation. Richesin and LAM sold about 12 motor

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vehicles to the public and failed to provide the titles for the vehicles sold. Trial set for May 2013.

• **State v. Rio's Auto Sales, Filed July 19, 2012.** State issued a Civil Investigative Demand against petitioner who is selling used motor vehicles to the public that have sustained wreck damage in excess of 6% or frame damage without providing the purchaser with the requisite written notices. Petitioner filed a Petition with the court to set aside the CID. Petitioner has since provided the state with the requested documents.

• **State of N.M. vs. Edgar Kranshuler, Filed 2010.** Kranshuler was an immigration consultant who was providing immigration-related services to the public in violation of the New Mexico Immigration and Nationality Practice Act. Court entered a Judgment on June 2011 ordering Kranshuler to pay \$6,200 in restitution to consumers and \$15,000 civil penalties for willful violations of the law. Post-judgment collection efforts are pending.

Homeownership Preservation Program

The New Mexico Attorney General's Homeownership Preservation Program is an unprecedented effort in New Mexico to assist homeowners who face mortgage delinquency or foreclosure. The New Mexico Attorney General will utilize approximately 11.1 million dollars over the next three years to coordinate and fund a statewide collaboration between the New Mexico Attorney General's Office, the New Mexico Mortgage Finance Authority, and eight non-profit organizations to provide a comprehensive housing safety net for New Mexico homeowners. This coordinated effort will provide a single toll-free number entry point for homeowners who will be screened and directed to the proper housing counseling or foreclosure legal help. There has never been such a coordinated effort in New Mexico.

The AG is also dedicating resources to aggressively pursue individuals and companies that prey on vulnerable homeowners through loan modification and real estate scams.

HPP funded services include:

Housing Counseling services: Provides foreclosure certified housing counselors who are available to assist New Mexico homeowner statewide. Increases available services by approximately 300%;

Legal Defense for foreclosure cases: Provides legal services attorneys to provide direct legal representation. Increases available services by approximately 800%;

Community Outreach and Education: Will allow local community-based organizations to share information and to educate their communities about housing and foreclosure prevention resources;

Housing and Foreclosure website: Website for homeowners information on statewide housing and foreclosure services and how they can access that help.

Toll-free Housing Hotline: Single entry point so that any New Mexico homeowner can call and obtain information about their home loan and be directed to the nearest service provider.

Court Foreclosure Facilitation Pilot Project: In addition, the New Mexico Homeownership Preservation Program is currently working with the Administrative Office of the Courts to design and implement a Foreclosure Settlement Facilitation Pilot Project which will provide the opportunity for banks and the homeowners to explore viable alternatives to foreclosure and loss of the home and, if there are none, 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:

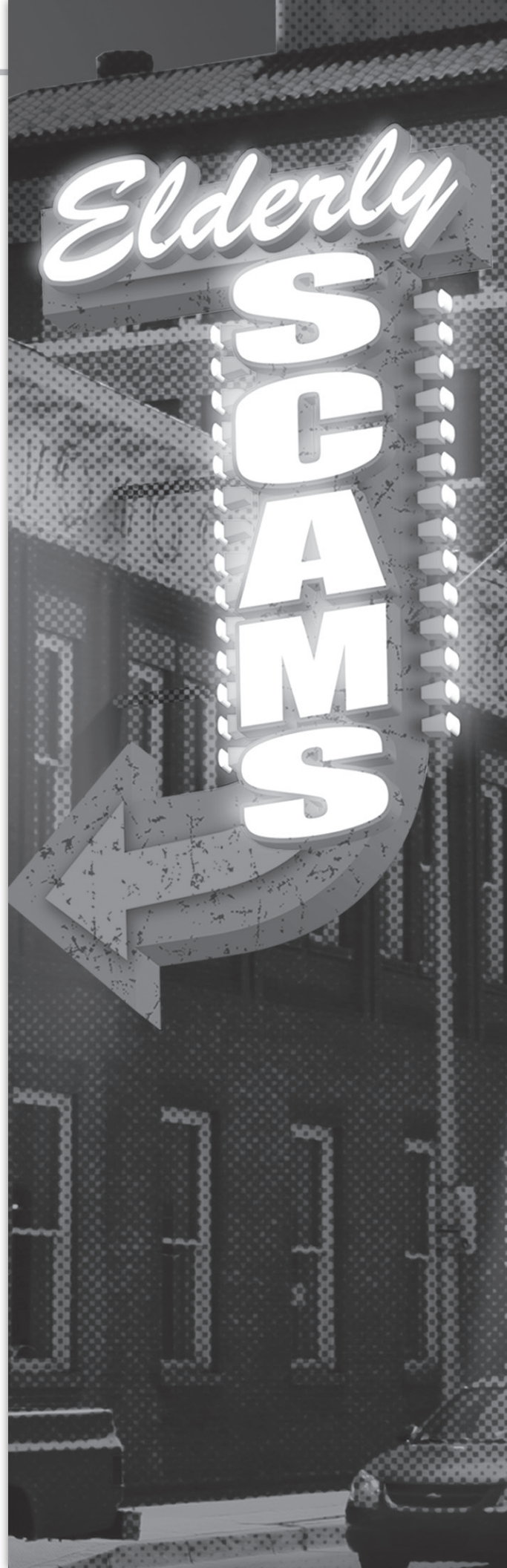
- Continued to work with the charities community to convert from hard copy registration to electronic registration;
- 4,975 charitable organizations are currently registered in New Mexico;
- 1,057 charitable organizations are listed but have not completed current electronic registration requirements;
- Received and reviewed the annual reports for the registered organizations and overall improved compliance with state law requirements;
- Leading the nationwide multistate action including 44 states and the Federal Trade Commission against a target group of organizations whose actions violate multiple state laws applicable to charitable organizations; and,
- Successfully intervened in action to protect



charitable assets of Khalsa International in the form of Akal Security when assets and ongoing business were threatened by members of the board acting in violation of their fiduciary duty.

LOOKING AHEAD

The staff of the division will continue successful dispute resolution efforts to assure that consumers and businesses can resolve disputes efficiently and economically. The staff of the charities unit will continue the successful compliance process for charities subject to New Mexico law and enhance enforcement efforts where violations have occurred. The division's litigation team will target deceptive, unfair or unconscionable practices throughout the market place to protect consumers, enforce New Mexico law, prevent future violations, recover restitution for consumers, and improve 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 represents the State of New Mexico in the 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 the United States Supreme Court. The duties and responsibilities of the division are mandatory and the division is a core function of the New Mexico Attorney General's Office. See NMSA 1978, Section 8-5-2 (1975).

The division is staffed with one division director, 14 attorneys, two support staff, and one victim advocate. The division director carries a full caseload of state and federal cases in addition to the management of the division. The staff serves in Santa Fe and Albuquerque. During 2012, three attorneys resigned or retired. Three Assistant Attorneys General were hired: Jane Bernstein, Sri Mullis, and Pranava Upadrashta. The division remains short-staffed and is experiencing two staff attorney vacancies, although a request has been made for one additional staff attorney position.

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. Because of the caseload and staffing, the New Mexico Court of Appeals and the New Mexico Supreme Court have accommodated the need for extensions of deadlines.

The majority of the federal habeas corpus cases are assigned to AAG Jane Bernstein and Division Director Margaret McLean. AAG Mark Lovato practices exclusively in the area of state habeas corpus and is responsible for pleadings and appearances at hearings throughout the state. Mr. Lovato is also responsible for maintaining cooperative relationships with the Corrections Department and the Adult Probation and Parole Department.

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 an established liaison program to the district attorneys in the 13

judicial districts throughout New Mexico.

The division counsels and advises other divisions including Litigation, Government Accountability, Prosecutions, ICAC, Medicaid Fraud, Border Violence, and Water, Environment, & Utilities. Specialized knowledge and proficiency about criminal law, appellate law, and writ proceedings are distinctive to the division. Another function is to provide notice as required by the Victims of Crime Act, NMSA 1978, Section 31-26-1 (1994).

Attorneys of the division serve on the DNA Oversight Committee, the Rules of Appellate Procedure Committee, and the State Habeas Corpus Working Committee. The division participates in the statewide district attorneys conference, the Second Judicial District Attorney's June Conference, and provides updates on specialized areas of the law.

YEAR IN REVIEW

In response to several pending cases involving claims of actual innocence and requests for post-conviction DNA testing, a new unit was created, entitled the Just Conviction and Exoneration Unit. The three members of this unit are AAG Nicole Beder, AAG James Grayson, and Director Margaret McLean. A memorandum of understanding has been initiated with all district attorneys regarding the formation of this new unit. Training will be conducted in 2013 to alert and educate prosecutors about the specialized functions of this unit.

A highlight of the year was the filing of a petition for a writ of certiorari in *Herring v. State of New Mexico* in the United States Supreme Court. The issue raised involved an important interpretation of the scope and application of *Miranda v. United States* in a first-degree child abuse case. The petition was prepared by AAG James Grayson and AAG Nicole Beder. Unfortunately, the petition was denied in January 2013.

Three federal evidentiary hearings were conducted in Las Cruces and Roswell. In each hearing, the legality of the state court conviction was challenged on a claim of ineffective assistance of counsel. With the issuance of several recent United States Supreme Court decisions that affected federal habeas corpus practice, each hearing required focused preparation, efforts, and knowledge.

In 2012, 279 opinions involving criminal appeals were issued by the New Mexico Supreme Court and the New Mexico Court of Appeals. Oral arguments and writ proceedings were also part of the practice before the New Mexico Supreme Court. Several

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appeals were recommended for mediation in the New Mexico Supreme Court and New Mexico Court of Appeals. One mediation required a remand and an appearance in the state district court regarding the interpretation of the sentence.

The division prepared and filed 219 briefs and 52 memoranda in the New Mexico appellate courts. For petitions for writ of certiorari and responses, 52 pleadings were filed. The division appeared for 27 oral arguments. In 2012, a total of 359 cases were opened. During the 2012 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 19 extraditions.

AAG Mark Lovato handled approximately 84 state habeas corpus matters during 2012. In the practice of federal habeas corpus in 2012, three opinions were issued by the United States Court of Appeals for the Tenth Circuit. Approximately 97 responsive pleadings and briefs were filed in the United States District Court for the District of New Mexico, in addition to federal evidentiary hearings and status conferences.

DNA expungement requests were reviewed and resolved by the division as required by statute.

Additionally, during the summer of 2012, AAG Joel Jacobsen spoke at the National District Attorneys Association Conference in San Diego. AAG Anne Kelly and AAG Sri Mullis attended the National Association of Attorneys General United States Supreme Court seminar in Washington, D.C. in November 2012. AAG Nicole Beder and AAG James Grayson attended a comprehensive DNA course in Portland, Oregon. Current updates on New Mexico and federal law influencing New Mexico criminal prosecutions are sent on a regular and routine basis.

LOOKING AHEAD

In 2013, as in all previous years, the hardworking members of the division will continue to ably and competently represent the interests of the State of New Mexico. It is the day-to-day work, the mandatory deadlines, and the perseverance and determination to offer quality legal representation by each member of the division that distinguishes the division. The reputation of the division is stellar. 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.

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.

2012



GOVERNMENT ACCOUNTABILITY DIVISION

Director: *Chris Lackmann*



activity on public time, and accountancy malfeasance. GAD also reviews cases for violations of the Governmental Conduct Act, securities and tax laws, Campaign Reporting Act, grand jury law, and more traditional criminal laws. Many times, while GAD's investigation reveals the initial complaint to be unfounded, facts are uncovered which lead to a larger investigation of other charges. For example, an investigation into an alleged battery can uncover a charge of tampering with public records or allegations of CRA violations can lead to embezzlement. The AGO takes all allegations of criminal conduct seriously. GAD reviews each complaint fully and objectively. The goal is to completely investigate each allegation to determine whether a crime has been committed.

VISION

Corruption poses the single greatest threat to government and its credibility with the citizens it serves. Attorney General King is committed to protecting the citizens of New Mexico from corruption and abuses in government. As part of this dedication, the mission of the Government Accountability Division is to fight public corruption and ensure that state government serves all New Mexicans. The vigorous enforcement of laws intended to ensure transparency, clean government, and accountability of all public employees benefits everyone.

GAD/Prosecutions/Investigations Intake & Complaint Review

The AGO routinely receives complaints from other governmental agencies and employees, as well as the general public. During the past year GAD, together with the AGO's Prosecutions Division, and Investigations Division staff, reviewed 919 formal complaints of potential criminal activity--- an increase of more than 40% over 2011.

After that initial triage process, GAD spends a great deal of its effort investigating and reviewing allegations of criminal conduct, often in areas of law not typically associated with criminal charges. Those can include alleged violations of the Procurement Code, Per Diem & Mileage Act, Public School Finance Act, conducting political

GAD continues to work with other state and local law enforcement agencies, as well as the FBI and U.S. Secret Service. GAD furnishes trainers under an Memorandum of Understanding with the U.S. State Department, Bureau of International Narcotics and Law Enforcement, in an anti-corruption outreach on the international level. GAD also represents the Attorney General's Office in the multi-jurisdictional Public Corruption Working Group.

YEAR IN REVIEW

• **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. GAD was in court 13 times in 2012 for these cases, responding to more than 20 defense motions. The AGO prevailed on all but one – a request for additional discovery. GAD engaged in extensive trial preparation for trial dates of October, 2012, and January, 2013, including 24 witness interviews and auditing tens of thousands of pages of documents. Both trials were cancelled at the last minute, due to a judge's health issues and a defense attorney's temporary appointment to the NM Supreme Court. Subsequently, a judge's replacement was disqualified by the defense attorneys, further delaying the trial. The AGO, however, continues to work toward getting these cases resolved.

• **Virginia Guzman/MVD Roadrunner Registration**
Guzman, indicted for embezzlement of more than \$600,000 and tax fraud, was the owner and operator of MVD Roadrunner Registration.

2012



Guzman, arrested in Arizona, has changed attorneys twice. Guzman has twice filed motions to dismiss based on various grounds. Both times GAD responded in writing; each time Guzman withdrew her motions in Court on the day of the hearing. Plea negotiations are underway.

• **Michael Eiskant**

Eiskant was charged with attempted false imprisonment, stalking, and other crimes committed while he was a Santa Fe city police officer. As part of a plea agreement with the AGO, Eiskant agreed to surrender his commission and to never again be a certified law enforcement officer. Eiskant is now a defendant in a civil suit brought by many of his victims, based upon the facts GAD uncovered in its investigation.

• **Jerome Block, Jr.**

On the verge of impeachment as a PRC Commissioner, Block entered into a plea agreement with the AGO and was sentenced in March, 2012, on six felony counts. In his plea agreement Block agreed to resign from the PRC, saving the State the \$1,000,000 the Legislature had set aside for the impeachment proceedings, and he agreed to never again seek elective office. Block received a suspended sentence and was placed on probation. As a condition of his probation, Block was ordered to pay restitution for the public money he misspent using his State gas card.

• **Shaun Anaya**

Anaya, engaged in a scheme to “rent” vacant homes, has been charged with burglary, possession of methamphetamine, and intimidation of a witness. Originally indicted by the 2nd Judicial DA, the AGO formally took responsibility for this case due to its connection with an ongoing investigation handled jointly by GAD, APD, and the U.S. Secret Service. Anaya was

released on bond after the DA indicted him; GA sought to have Anaya jailed and has been successful in keeping Anaya in custody on a \$175,000 cash only bond. In 2012, GAD indicted Anaya in two additional felony cases. The division continues to investigate charges involving dozens of properties and the AGO anticipates filing additional charges against Anaya and others.

Additional investigations are being actively pursued by GAD; however, for ethical and AGO policy reasons, nothing further can be discussed about them.

LOOKING AHEAD

GAD expects to continue successful fulfillment of its stated mission in the year ahead.

2012



INVESTIGATIONS DIVISION

Director: *Earl Holmes*



VISION

The Investigations Division provides highly experienced Special Agents to conduct selected major criminal investigations throughout the State of New Mexico. The division assists district attorneys and local law enforcement agencies in complex and multi-jurisdictional investigations. Many cases involve local conflicts of interest. The division specializes in investigating white collar and multi-jurisdictional crimes, working in cooperation with local, state, and federal agencies.

The Internet Crimes Against Children Unit (ICAC) assists agencies within New Mexico and throughout the nation with child exploitation crime investigations and prosecutions. In its role as developer of the statewide ICAC Task Force, this unit routinely assisted in tactical operations with state and federal Probation/Parole and U.S. Marshals in the monitoring of sex offenders residing in New Mexico.

The Human Trafficking Investigations Unit is the investigative arm of the agency's Human Trafficking Task Force. This unit coordinates human trafficking efforts statewide with local, state, and federal

agents. The unit focuses on human trafficking cases involving forced labor and persons trafficked for the sex industry.

YEAR IN REVIEW

The Investigations Division is currently staffed with five Special Agents and one financial investigator along with two administrative assistants. In the last year, the unit has reviewed 652 inquiries and closed approximately 388 cases/inquiries and continues to actively work approximately 20 open cases/inquiries. In addition to managing their caseloads, Special Agents work closely with AGO attorneys on indicted cases, assisting with subpoena service and a variety of other support duties. Special Agents also assisted other AGO divisions approximately 25 times in 2012.

Over the past year the Internet Crimes Against Children Unit (ICAC) has executed 256 separate ICAC federal and state search warrants throughout the State of New Mexico, seizing computers and computer-related evidence related to child pornography. Additionally, the unit executed 100 arrest warrants.

2012



During the last fiscal year, the ICAC Task Force collectively conducted 376 investigations, 91 physical arrests, and 953 forensic exams and at the time of this report, had 436 active investigations throughout the state.

The AGO ICAC Unit now has a fully functional forensic lab, two IACIS certified examiner instructors and one smartphone/GPS investigator. The ICAC statewide Task Force has seven additional labs with forensic examiners throughout the state and eight smartphone/GPS investigators.

The ICAC Task Force provided training on Internet safety and prevention throughout the state with 350 trainings for more than 14,000 participants. Members have attended 22 public events and talked to over 9,800 civilians.

LOOKING AHEAD

The Investigations Division's capabilities continue to evolve technologically. It expects to apply newly acquired technologies and methods internally and to its cooperative efforts involving federal and other state/local agencies. The Investigations Division continues to strive toward improving its investigative capabilities in the coming year by fine-tuning many of the changes that have been made over the past year such as:

- Increasing effectiveness
- Improving investigative product
- Enhancing comprehensive investigations
- Continuing integration of the Governmental
- Conduct Act as it relates to joint investigations with local law enforcement agencies

The Internet Crimes Against Children Unit anticipates, in 2013, to increase investigations, prosecutions, and outreach efforts statewide in

connection with the sexual exploitation of children. ICAC is ensuring that more offenders are being held accountable for their actions.

The ICAC Unit will continue to participate in the sex offender compliance operations conducted by the U.S. Marshals Office, Probation/Parole and various County law enforcement agencies. During these operations trained AGO Special Agents examine computers and electronic media belonging to sex offenders under the direction of Probation/Parole.

The Human Trafficking Investigations Unit continues its growth in numbers of Task Force members, thereby increasing investigative knowledge and awareness.

2012



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. The division seeks to conduct administrative prosecutions that further the policy goals of the various state Boards and Commissions while protecting the due process rights of licensees. The division also accepts service of process for the state and serves as a resource for all state departments. Additionally, it monitors special commission attorney assignments and defends appeals in division cases.

YEAR IN REVIEW

At the conclusion of 2012, the division consisted of ten Assistant Attorneys General, three paralegals, and one legal assistant. Over the past year, 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 two full-time attorneys and two paralegals 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.

Case Highlights

• Bankruptcy:

AAG Jim Jacobsen represents the bankruptcy section, which handled several new bankruptcy cases and proceedings, in addition to pending cases. His work has resulted in the Taxation & Revenue Department's recovery to date of nearly \$2.2 million in FY 2012, and approximately \$811,951.48 so far in FY 2013. This section assists other divisions and state agencies in pursuing debtor claims and recently obtained a denial of the bankruptcy discharge against a debtor pursued by the AG's Consumer Protection Division for defrauding homeowners.

• Antitrust

AAG Matthew Jackson represented the State's interests in several multi-state antitrust matters, including an e-Books lawsuit against Apple Computers. Mr. Jackson is also overseeing the completion of New Mexico's claim in the DRAM antitrust litigation, which at this point, is only awaiting a determination of the attorneys' fees to which the State is entitled.

• Securities

SIC v. Bland, et al.

Division Director Scott Fuqua currently provides representation to the State Investment Council in its lawsuit against former State Investment Officer Gary Bland and several third-party placement agents whose involvement in securities investments made by the Council were hidden from the Council. The litigation is ongoing and concerns several millions of dollars invested on behalf of the State.

Mr. Fuqua is also representing the Public Employees Retirement Association and the

2012



Education Retirement Board in an adversary bankruptcy proceeding concerning Lyondell Chemical Company. In the litigation, the bankruptcy trustee seeks to claw back proceeds earned by Lyondell shareholders (including the PERA and the ERB) on sales of Lyondell shares.

In re OppenheimerFunds, Inc.

AAG Matthew Jackson successfully represented the State of New Mexico in obtaining a \$64.1 million settlement from OppenheimerFunds arising from the performance of New Mexico's education savings accounts. Mr. Jackson is also defending the State in related litigation filed by account holders. That litigation had significantly delayed the distribution of funds to the account holders, but due to Mr. Jackson's efforts the last of those funds were distributed in 2012.

• Civil Litigation

Tobacco Enforcement

AAG Nan Erdman and AAG Ari Biernoff continued preparing for New Mexico's arbitration proceeding against large tobacco manufacturers concerning the payments those manufacturers made to New Mexico in 2003 pursuant to the tobacco Master Settlement Agreement. Mr. Biernoff and the State's contract counsel, David Thomson, will present New Mexico's case to the arbitration panel in March of this year. The manufacturers seek the return of approximately \$35 million paid to the State.

AAG Rebecca Parish is handling several lawsuits against tobacco manufacturers that did not sign the Master Settlement Agreement for the payment of escrow owed by those manufacturers pursuant to New Mexico's Tobacco Escrow Act. Each lawsuit is a critical component of the State's obligation to diligently enforce its escrow statute in return for receiving annual payments from the large tobacco companies.

Election-Related Litigation

Director Fuqua and AAG Jackson represented the Secretary of State and the State of New Mexico in several election-related lawsuits including ballot access litigation, petition signature contests, litigation concerning the State's compliance with the federal "Motor Voter" law, redistricting litigation in federal court, and litigation related to New Mexico's public campaign funding law.

Administrative Prosecution

In 2012, the Litigation Division opened 304 administrative prosecution cases for New Mexico's professional licensing boards. AAGs Gloria Lucero, Sally Galanter, Cholla Khoury, and Walter Hart have carried the majority of that caseload, successfully completing most of those cases. Several, filed in the latter part of 2012, remain open. These prosecutions include prosecutions of law enforcement officers, construction contractors, dentists, accountants, pharmacists, counselors and therapists, and every other profession (excepting only lawyers and doctors) that requires licensure from the State.

Qui Tam Litigation

AAG Seth Cohen handles all of the State's litigation brought under the Fraud Against Taxpayers Act. He is currently actively litigating the State's claims against ExxonMobil concerning payments made by the State to ExxonMobil for the cleanup of ExxonMobil gas stations around the State. The New Mexico Environment Department is also a party in that case. Mr. Cohen is also overseeing several additional qui tam matters currently under seal, and he oversaw the settlement of New Mexico's claim against AstraZeneca arising from the marketing of AstraZeneca's class-2 antipsychotic drug. That claim resulted in a \$3.8 million settlement. AAG Cohen has taken a leadership role in organizing AGOs around the country to act collectively in investigating and pursuing multi-state, non-Medicaid qui tam claims.

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.

2012



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, the 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.

Our vision is 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 1/1/2012 to 12/21/2012, the MFEAD's criminal prosecutions secured nine indictments and seven convictions. Additionally, nine individuals were sentenced resulting in six being incarcerated and contriuted toward cumulative restitution of

\$231,752.73. Regarding civil prosecutions, the MFEAD secured 22 civil actions, which resulted in \$4.6 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.

Santiago Baca, IS Specialist/Investigator, and Patricia Padrino Tucker, Assistant Attorney General, were invited to speak at the National Association of Medicaid Fraud Control Units' (NAMFCU) Annual Training Conference in New York City regarding their recent success at trial against a corporate defendant for violation of the Medicaid Fraud Act. The corporate defendant, Counseling and Mediation, a behavioral health Medicaid provider agency, and the owner of the company, Arcilia Holguin, were tried together on multiple counts of Medicaid Fraud and found guilty in a groundbreaking conviction. Mr. Baca and Ms. Tucker presented to an audience of 300 other members of Medicaid Fraud Control Units describing what they were required to prove in order to obtain a conviction against a corporation for Medicaid Fraud. Representatives from the New Mexico MFCU were selected from many applicants of the state MFCUs to participate as one of 25 other presentations.

The following significant case was prosecuted by the MFEAD this year:

State v. Catherine and Joseph Hernandez:

The Medicaid Fraud and Elder Abuse Division prosecuted married couple Catherine and Joseph Hernandez of Medicaid Fraud in their billing for the care of their son Joseph, Jr. The couple was found to have exaggerated the needs of their son, who was diagnosed with spina bifida. The son maintained a full-time job as a parking attendant and lived in his own residence from 2006 forward. Joseph, Jr. also maintained a long-term relationship with a woman who occasionally lived with him during the relevant time period. Despite their son maintaining a full-time job, having his own residence, and maintaining a busy and active social life, Catherine and Joseph Hernandez frequently billed 40 hours/week of care for Joseph, Jr. During one period, Catherine Hernandez billed for a service calling for 24-hour care and requiring the recipient to live with the person providing the service. During part of the time she billed Medicaid

2012



for this service, Catherine Hernandez' son was living on his own and working full time.

Santa Fe's District Court Judge Michael Vigil instructed Catherine Hernandez to pay back \$52,000 to the Medicaid system and serve five years probation. Joseph Hernandez will pay back \$7,000 and serve three years probation. Both were found guilty by a Santa Fe jury in January of Medicaid Fraud and Falsification of Document charges related to crimes committed between April 2006 and February 2010.

LOOKING AHEAD

In support of our 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.

The following significant case is expected to be begin trial in 2013:

State V. Raymond Eichwald: On 11/28/2011, Eichwald was indicted on charges that he submitted claims to the State of New Mexico Medicaid System for services he did not provide or for services that were inadequately documented. The defendant operated an eyeglass business from his home in Albuquerque and a shop in Cuba, N.M., called Old 44 Optical. For some of Eichwald's clients, claims were submitted to Medicaid for more than 35 pairs of eyeglasses for one person. When interviewed, the Medicaid clients stated that they may have received one or two pairs of glasses. Eichwald faces up to 18-months incarceration and fines up to \$5,000 for each of the 96 felony counts of Medicaid Fraud.



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PROSECUTIONS DIVISION

Director: *Mary Helen Baber*



VISION

Sex crimes against children, online crimes against children, homicide, domestic violence, sex offender parole, and certain white collar crimes are the primary focus of the Prosecutions Division. Attorney General Gary King also selects significant cases which impact New Mexico for investigation and prosecution by this division.

YEAR IN REVIEW

AAG Shannon Murdock was selected 2012 New Mexico State Bar Child Abuse Prosecutor of the Year. With support by talented and motivated colleagues, paralegals, and investigators, Ms. Murdock led the division in multiple successful prosecutions of child predators.

Since this administration took office in 2007, the number of Internet Crimes Against Children (ICAC) and child sexual abuse case has skyrocketed. The division prosecuted a handful of ICAC cases in 2007. In 2009 the Attorney General's Office was awarded a federally funded ICAC grant. By August 2011, the division successfully prosecuted 22 ICAC cases. As of Jan 2013, the division has almost quadrupled the caseload. As we begin 2013, the division has nearly 80 active cases, grand jury investigations, pending pleas, and trial settings.

• **NM v. Frederick Whitaker**

Originally investigated as an ICAC case, AGO investigators and Prosecutions Division attorneys discovered that the defendant had sexually assaulted his step daughter when she was a child. After a lengthy investigation, felony indictments, and at least two jury trial settings, the matter was set for trial. However, the defendant refused to get dressed and refused to leave his cell for transport to the courthouse. The AGO applied for a Supreme Court writ, and the matter was set for trial yet again. Ultimately, the defendant pleaded guilty to criminal sexual penetration of a minor and other felony charges. He is now serving 12 years in the NM Department of Corrections.

• **NM v. Robert Pallulet**

Investigators focused on the defendant after a complaint was made that the defendant was using the Internet to solicit a 15 year-old from his church group. The defendant was indicted for sexual solicitation (of a child) felony offenses. He is presently on felony probation and required to register as a sex offender.

• **NM v. Charles Boston & NM v. Robert Foster**

AAG Clara Moran prosecuted the defendants for 3rd degree felony offenses of Child Solicitation by an Electronic Communication Device. Both defendants were convicted as sex offenders and required to register as sex offenders.

• **NM v. Kenneth Carrejo**

AAG Trevor Rigler indicted NM Corrections guard Kenneth Carrejo on four counts of criminal sexual penetration of a male inmate. The case was indicted in August 2012. The defendant disqualified the original District Court judge assigned. The matter is pending assignment of a new judge and a jury trial setting.

• **NM v. Edward Cebada**

AGO investigators were alerted to an aggressive online solicitor who lured at least three teenage girls into sexually explicit exchanges via the Internet. One teen victim told the defendant not to bother her or she would tell her father who is a policeman. The defendant alarmed the girl by telling her he was coming to her house anyway. The defendant escalated the online conversations into sexual crimes against the 14 year-old girl and the 15 year-old girl. Law enforcement was informed of the case by the policeman father of one of the girls. AGO Investigator Owen Pena was instrumental in bringing these cases to the grand juries. The defendant has been indicted in Bernalillo and Sandoval counties for a total of three felony indictments encompassing 15 felony sex crimes against children and internet crimes.

2012



• **NM v. Loretta Mares & NM v. Richard Crabtree** (St. Vincent Hospital fraud) In February 2012, Defendants Richard Crabtree, a hospital administrator and Loretta Mares, a professional services contractor, were indicted on multiple felony counts of Fraud over \$20,000, Fraud over \$2,500, and Conspiracy to commit fraud. On Dec. 19, 2012, Crabtree pleaded guilty to two second degree felonies, Fraud over \$20,000 and guilty to Conspiracy to Commit Fraud. He is awaiting sentencing. Restitution will be determined at a separate hearing. Mares is pending disposition.

• **NM v. Gerald Tabet**

The defendant was indicted on October 24, 2012 for 10 second degree felony fraud counts. The defendant engaged in a number of schemes to lure friends and others to invest in a fast food franchise, Nothing But Noodles. He lured some investors from a group of friends and parents he knew from an Albuquerque area Little League organization. The defendant is scheduled for hearing in mid-February. The defendant has failed to obtain a lawyer since his arraignment on November 26, despite the prosecution's motion to compel. The defendant's legal counsel issue is expected to be addressed at the February 2013 hearing.

DWI Department of Transportation Grant

• **NM v. Alfred Lovato**

AAG Donna Bevacqua-Young, the 2011 Mothers Against Drunk Driving Milford Award winner and the 2011 NM State Bar DWI Prosecutor of the Year, undertook the prosecution of former state police officer Alfred Lovato, the passenger in a 2008 vehicular homicide. Prior to his trial, Lovato appealed the issue of whether the State could charge the passenger. The Court of Appeals upheld the state, citing the Marquez case as precedent. Passenger liability in DWI cases, particularly in cases involving fatalities, is an emerging area nationwide. New Mexico is following the model program in Tennessee. Bevacqua-Young tried the Lovato case before a Santa Fe jury in February 2012. Driver Carlos Fierro, still serving a prison term, testified on behalf of Lovato. The District Judge directed a verdict on the felony charge of accessory to vehicular homicide, and the jury acquitted on the charge of leaving the scene of a crash. The jury was unable to reach a verdict on the charge of accessory to leaving the scene of a crash.

• **NM v. James Vigil**

Off duty Santa Fe police officer Vigil was arrested for DWI by NM state police. AAG Bevacqua-Young prosecuted the case in Santa Fe Magistrate Court and the defendant was convicted. He appealed the case to district court. The defense argued the United States Supreme Court Bullcoming case

in order to exclude the evidence of the IR 8000 breath testing machine. The New Mexico Court of Appeals sided with the state. The district court case is scheduled for trial in Santa Fe District Court in March 2013.

LOOKING AHEAD

Internet Crimes Against Children (ICAC)

Sophisticated technology and investigations are leading to more and quicker apprehension of Internet child abusers and exploiters. The AGO ICAC team has recently undertaken numerous new cases, including a high ranking law enforcement employee who allegedly attempted to meet a 13 year-old girl at the public library in order to engage in sexual acts. The Prosecutions Division, along with the statewide ICAC Task Force and effective collaboration with the U.S. Attorney for the District of New Mexico expects to apprehend and prosecute more child sexual predators in 2013. 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.

Sex Offender Parole Hearing

Sex offender parole hearings are burgeoning. After setting procedural protocols with a multi-agency team, in development since early 2008, the AGO and the Public Defender conducted hearings or achieved dispositions of nine cases in 2012. An additional five parole hearings are scheduled for March 2013. In 2014, 22 cases are expected to proceed to hearing and 39 additional cases will be heard in 2015. 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.

DWI

In 2012, in addition to a busy caseload of trials and appeals, AAG Bevacqua-Young trained more than 200 law enforcement officers and prosecutors in NM and nationwide. She was a featured presenter at the national DWI Conference in Denver. She will continue training and serving as a statewide resource prosecutor in 2013.

2012



WATER, ENVIRONMENT, & UTILITIES DIVISION

Director: *Stephen Farris*



VISION

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

YEAR IN REVIEW

During the past fiscal year, WEU brought several cases and continued litigating others to protect New Mexico's water and environment. For example, WEU continued its case in the United States Federal Court for New Mexico against the United States Department of Interior to invalidate the 2008 Operating Agreement for the Rio Grande Project. The Attorney General contends the Agreement violates several federal laws and illegally takes water that should be allocated to New Mexico farmers and allocates it to farmers in Texas. In another case WEU, representing the New Mexico State Engineer, won a victory in the New Mexico Supreme Court in *Tri State Generation and Transmission Inc., v. John D'Antonio, Jr., State Engineer*. The Supreme Court affirmed the State Engineer's authority to administer water rights in basins that have not been fully adjudicated. Both of these cases raise issues that have become increasingly critical to the public health and safety of New Mexicans in the continued

drought. WEU continues its involvement in the Middle Rio Grande Endangered Species Collaborative Program which has the twin goals of collaboratively recovering the endangered Rio Grande silvery minnow and southwestern willow flycatcher while also protecting existing and future uses of water.

In environmental cases, WEU represents the Attorney General in a rulemaking before the Water Quality Control Commission in which the state Environment Department proposes to roll back ground water quality protections at copper mine sites. The Attorney General has intervened in that proceeding to protect the state's ground water. WEU is actively involved in the natural resource damage assessment process for the Los Alamos National Laboratory site, the Fort Wingate Depot Activity site, and the Quivera mining site, where Rio Algom Mining LLC mined uranium, representing the New Mexico Office of Natural Resources Trustee (ONRT). WEU also represents ONRT in implementing the \$13 million settlement in 2011 for groundwater natural resource damage claims against Freeport McMoRan Inc. (FMI) through restoration projects. Additionally, WEU represented ONRT as a co-trustee along with the U.S. Fish and Wildlife Service in the successful settlement of natural resource damage claims against FMI in addition to the previously settled groundwater claims. The 2012 settlement provides \$5.5 million for restoration projects and a transfer of land to fill in and enlarge New Mexico's City of Rocks State Park. WEU represents the State of New Mexico in multistate litigation to protect our air resources. WEU represents the State in litigation against the

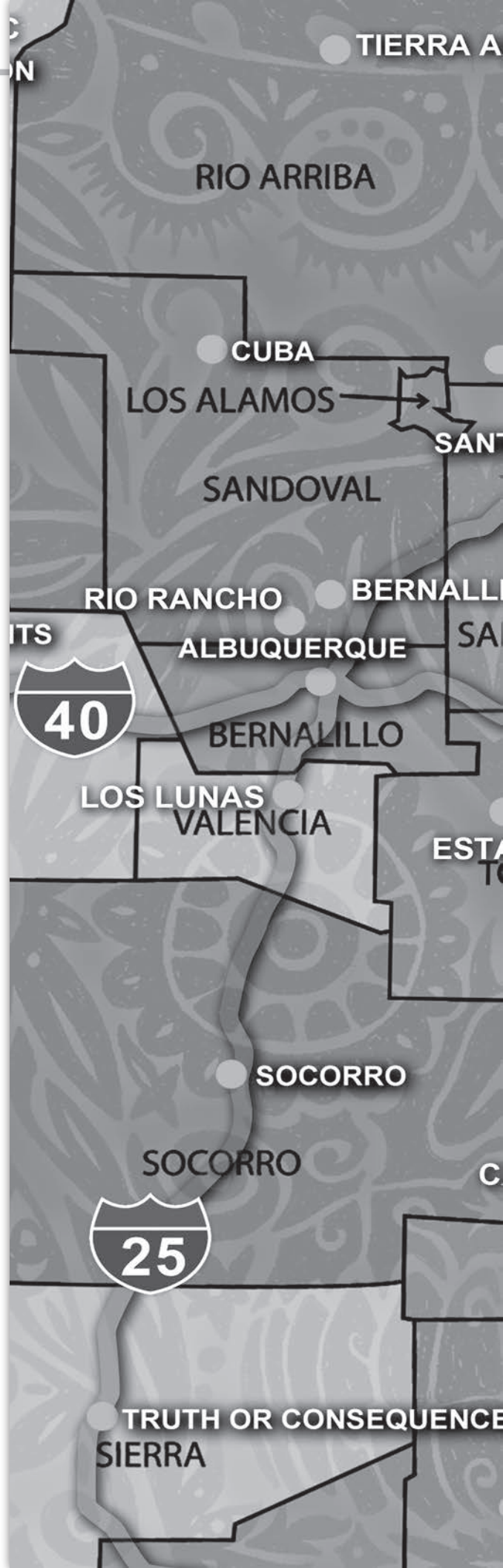
2012



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. The State, through WEU, also submitted comments in support of EPA's strengthened rules on greenhouse gas emissions for new power plants. In addition, attorneys for the division are defending the State in the Sanders-Reed public trust greenhouse gas case. The State filed motions to dismiss both the original and an amended complaint. The motions were partially granted and partially denied. The division attorneys continue to represent the State as appropriate.

The Attorney General participated in a large number of utility cases in the last year, representing the interests of residential and small business ratepayers. Among the more important cases was a PNM case in which the Public Regulation Commission (PRC) permitted the utility to earn a profit on expenses being reimbursed by customers. Because this type of ratemaking is not provided for by the Public Utility Act, the Attorney General filed an appeal of the decision and argued it before the NM Supreme Court, where it is pending. The Attorney General's Office was involved in several rulemaking cases, where we proposed rule language and filed comments. These included an important rule on the use of "future test years", as well as cases on purchased power agreements, energy efficiency, decoupling and reasonable cost threshold for renewables. The Attorney General filed a cease and desist complaint against New Mexico Gas Company seeking to prohibit the disconnection of customers who receive gas through gathering lines. The case is still pending before the PRC. The AGO also filed an objection to PNM's plan to close its customer payment centers around the state. Based on the objection the PRC required the offices to remain open two days a week. The agency also participated in the cases relating to the curtailment of gas during the cold period in 2012, and a related case on severe weather rules. Other cases during the last year included numerous utility efficiency and renewable cases, as well as certification of proposed utility construction, including a proposal by New Mexico Gas Company to construct a liquefied natural gas storage facility. In addition, Southwestern Public Service Company has filed for an increase in rates, and PNM is expected to do so this year.

Additional major accomplishments in PRC matters, including telecommunications and health insurance regulation, on behalf of the consumer interest include: Stipulation with the New Mexico Gas Company to hold their rate increase to 5%; Litigation of claims of "effective competition" from both Verizon and CenturyLink telecommunications companies; advocacy at the state legislature on behalf of the consumer interest for



constitutional amendments requiring 1) additional qualifications for Public Regulation Commissioners, 2) greater clarity with respect to roles of PRC Advocacy Staff and Advisory Staff, 3) creation of an independent Superintendent of Insurance; advocacy against a fare increase for individuals purchasing health insurance from Blue Cross Blue Shield NM; review and analysis of numerous legislative proposals; and completion of litigation on behalf of the consumer interest regarding Sacred Wind Communications' request for support from the state's Rural Universal Service Fund.

The WEU environmental crimes unit has assisted and initiated investigations ranging from the U.S. Forest Service to state and local jurisdictions. The division also assisted the NM Environment Department with environmental cases in Bernalillo County and Sandoval County. Along with the

investigations, WEU has initiated training with State Police and the NM Law Enforcement Academy on the subject of environmental crimes and the impact of those crimes.

LOOKING AHEAD

In the coming year, WEU looks forward to continuing its vital mission of protecting New Mexico's scarce water resources by offensive and defensive litigation. The division will continue its participation in rulemaking and litigation to maintain New Mexico's healthy environment as well as its role in enforcing New Mexico's laws against those who commit environmental crimes. Finally, WEU will represent the interests of residential and small business consumers in a variety of rulemakings, regulatory adjudications, and court cases in changing and challenging utility, insurance, and telecommunications environments.



A collage of various advertisements and posters. From left to right: a water conservation poster with a blue flame-like graphic and text 'WATER LIFE AGRICULTURE DRINK', 'WATER CONSERVATION', 'CONNECTS US ALL', 'WATER EFFICIENCY'; a poster for 'PRESENTACION PROXIMA LEGAL' with a train image and 'COMPRAY VENIR LAS CASAS MOVIL'; a poster for 'Mr. Com' with a handshake graphic and 'is serious business'; a poster for 'HIBITION OF FILM' with a person in a uniform; a poster for 'INTERNATIONAL KEY LAUNCH INVESTMENT' with a building image and '37-888'; a poster for '37-888' with a person's face and 'CKING HOTLINE Para Trato de Personas'; a poster for 'Making a Career in PUBLIC SERVICE Obtainable' with a rooster and a gavel; a poster for 'HUMAN TRAFFIC' with a red hand graphic and 'TRAFFIC'; a poster for 'JUDICIAL TRAINING' with a scale of justice and 'OCTOBER 18, 2011'; and a poster for 'TRAIN THE TRAINER' with a person in a uniform.