

State of New Mexico



Office of the Attorney General 2017

ACCOMPLISHMENTS



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ABOUT THE OFFICE OF THE ATTORNEY GENERAL

Authority

The Office of the Attorney General is the statutorily created Department of Justice for New Mexico, (NMSA § 8-5-1). The Attorney General's duties include but are not limited to prosecuting and defending all causes in the supreme court and court of appeals in which the state is a party or interested. prosecuting and defending in any other court or tribunal all actions and proceedings, civil or criminal, in which the state may be a party or interested when, in his judgment, the interest of the state requires such action or when requested to do so by the governor. (NMSA § 8-5-2)

Mission

Our mission is to protect New Mexicans in order to make our communities safer and more prosperous. We prosecute criminal and civil offenses; advocate for consumers and those without a voice; empower the public with education; connect the public to beneficial resources; and serve as legal counsel for the State and its agents.

Vision

We aspire to be an innovative leader in New Mexico, recognized for proactively finding solutions and responding to evolving needs by leveraging partnerships with individuals, community organizations, government agencies, and businesses.

Focus

During my tenure as Attorney General, I have committed myself and my office to protecting New Mexican families by bringing targeted enforcement on behalf of the State. Since taking office, I have focused on three key areas:

- ◆ Protecting children, vulnerable populations and families
- ◆ Targeting violent criminals, and
- ◆ Fighting public corruption.

The programming of these key areas is undertaken by the various Divisions within my office supporting this vision by focusing efforts on:

- ◆ Prevention,
- ◆ Prosecution, and
- ◆ Public awareness.

The Office of the Attorney General worked diligently to protect the safety and well being of all New Mexicans throughout 2017, and many of our greatest successes are highlighted in this Annual Report.

DEPUTY

ATTORNEY'S GENERAL



*Deputy Attorney General
for Civil Affairs*

Tania Maestas

As the Deputy Attorney General Tania oversees Civil Affairs for Attorney General Hector Balderas.

Before being appointed to her position, Tania held the positions of Assistant Attorney General and Director of the Office's Open Government Division. She has dedicated the majority of her career to government practice, also serving as Chief Legal Counsel for the New Mexico Regulation and Licensing Department. Before moving to New Mexico, Tania worked with the Colorado Office of the Attorney General.

Tania received her J.D. from the University of Denver School of Law and is an instructor for the National Association of Attorneys General Training and Research Institute.



*Deputy Attorney General
for Criminal Affairs*

Sharon Pino

As the Deputy Attorney General Sharon oversees Criminal Affairs for Attorney General Hector Balderas.

Sharon joined the office as an Assistant Attorney General in 2010. She worked in the Special Prosecutions and the Border Violence Divisions until assuming her current position in 2015. Sharon worked as an Assistant District Attorney for the First Judicial District Attorney's Office in New Mexico. While she was in private practice she handled contract domestic violence and sexual assault prosecutions for the Eight Northern Indian Pueblos Inc. In 2007, Sharon was appointed as the Domestic Violence Czar for Governor Bill Richardson.

Sharon received her J.D. from the University of New Mexico School of Law, and her Bachelor of Arts degree in Criminology from the University of New Mexico.

EXECUTIVE STAFF



***Matt Baca,
Senior Counsel***

Matt received his B.A. in Organizational Communication from Pepperdine University in 2004 and his Juris Doctorate from the University of New Mexico in 2012.



***Joshua Hawkes,
Special Agent for Intelligence and Dignitary Protection Unit***



***Ken Stalter,
General Counsel***

Ken obtained his B.A. from Cornell University in 2004 and his Juris Doctorate (J.D.) from Harvard Law School in 2008.



***Julia Anderson,
Policy Director***

Julia received her B.A. in Sociology/Political Science from the University of New Mexico in 2012 and her Masters in Public Policy & Administration from Northwestern University in 2017.



***Victoria Bransford,
Administrative Assistant***



***Richard Gonzales,
Special Projects Coordinator***

CRIMINAL AFFAIRS

WORK ON THE BORDER



It is a priority for the Office of the Attorney General to maintain relationships with our Mexican Partners, with whom we work so closely in the pursuit of justice and thwarting criminal activity along the U.S./Mexican border. To further this work, the Office of the Attorney General has a designated Criminal Affairs Border Liaison. This year, in addition to collaborating on daily cases and projects, on January 27, 2017, our Criminal Affairs Border Liaison attended the Border Violence Protocol Meeting at Clint, Texas along with Law Enforcement Officials from Border Patrol, ICE, Homeland Security, and from Mexico PGR, Mexican Consulate, CISEN, Mexican Federal Police, Chihuahua State Police (Unica), C4, and Mexican Federal

On February 8, 2017, our Criminal Affairs Border Liaison met with Juarez Municipal DPS Secretary, Juarez Police Chief of Operations and Juarez Municipal Chief Liaison Officer. The DPS Secretary expressed his appreciation for our continued cooperation between our agencies.



FINANCIAL CONTROL

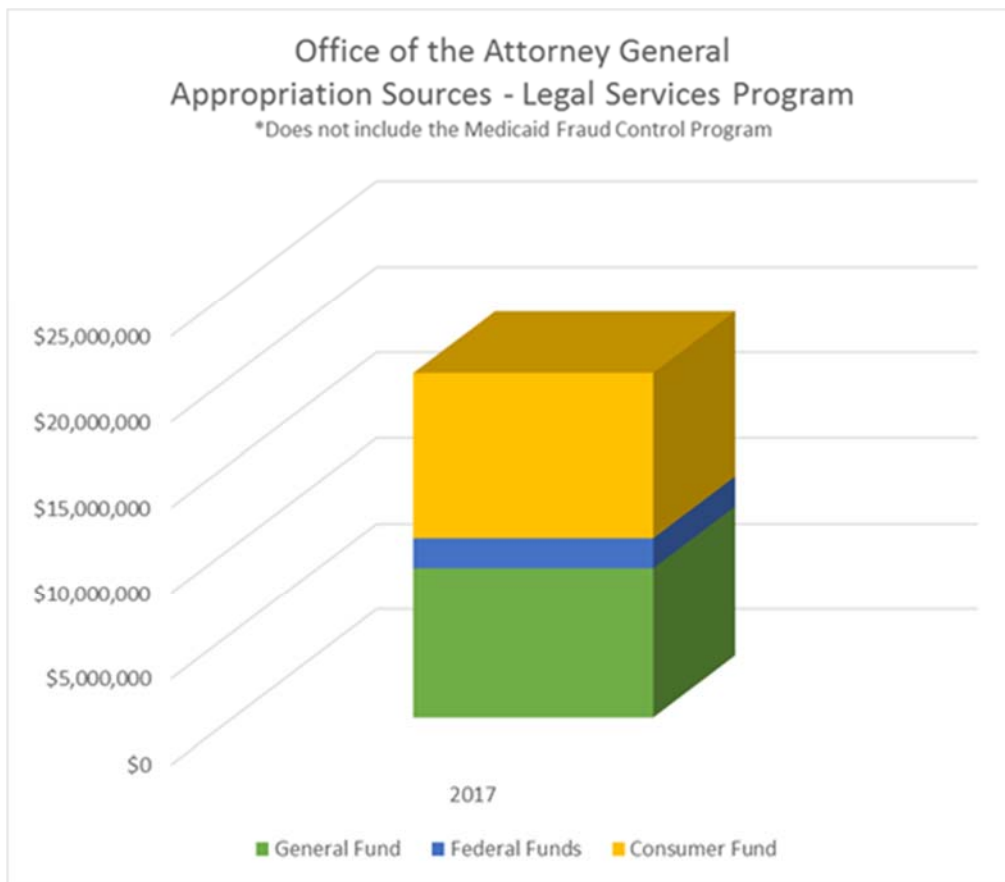
DIVISION

Total Fiscal Year 2017

Appropriation: approximately \$22 million

Federal Funding: approximately \$4 million

Special Appropriation: \$1 million



FCD OVERVIEW

In the most recent fiscal year 2017, NMOAG's external audit received an unmodified (clean) opinion. Zero findings were identified with its state and federal audit.

The New Mexico Office of the Attorney General had a successful FY17 through the oversight of several federal grant programs. In total, over \$4 million of federal money was utilized to support essential programs and staff which include:

- ◆ Internet Crimes Against Children (ICAC)
- ◆ Medicaid Fraud Control Unit (MFCU)
- ◆ Enhanced Collaborative Model (ECM) Human Trafficking Task Force
- ◆ Traffic Safety Resource Program
- ◆ Teen Dating Violence Coordinator
- ◆ Southwest Border Anti-Money Laundering Alliance (settlement funds, not a federal award)

CHIEF

FINANCIAL OFFICER



*Natalie Cordova,
Chief Financial Officer*

Natalie Cordova

As the Chief Financial Officer (CFO) Natalie is responsible for implementing and maintaining proper internal controls over the Office of the Attorney General's financial transactions. The CFO directs the Financial Control Division (FCD), which oversees all financial transactions including general ledger, purchasing, budget and grant management. In FY 2017, FCD provided financial compliance with over \$4 million in federal awards, as well as compliance with states rules and rules governing financial transactions.

Natalie's career began as an external auditor for a private local accounting and consulting firm. She spent seven years as Audit Director at the New Mexico Office of the State Auditor under the direction of Hector Balderas. She transferred to the New Mexico Public Employees Retirement Association (PERA) as the Chief Financial Officer (CFO) where she spent nearly three years before transferring to the Office of the Attorney General as CFO, having oversight of the Financial Control (FCD) and Fleet and Facilities Divisions.

Natalie obtained her bachelor's degree from New Mexico State University in Accounting and Economics in 2004 and is an actively licensed Certified Public Accountant (CPA).

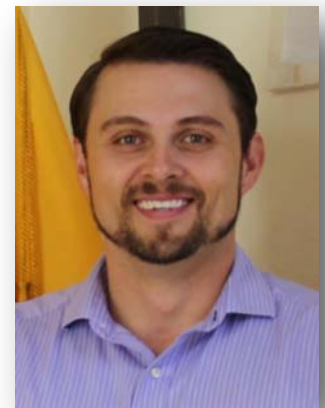
FCD Team



*Teresa Storey,
FCD Director*



*Nick Eckert,
Grants Manager*



*Karlo Cantu,
Fleet & Facilities
Director*

CIVIL

AFFAIRS

Civil Affairs at the Office of the Attorney General has broad statutory authority over civil legal matters and proceedings involving the state. The Office of the Attorney General is responsible for:

- ◆ Defending and prosecuting civil actions and proceedings in court when the state is a party or interested, or when the Attorney General believes the interest of the state requires it;
- ◆ Defending state officers and employees who are named as parties in civil actions arising from the performance of their official duties;
- ◆ Providing legal representation and advice to state agencies, boards and commissions; and providing written opinions on legal questions submitted by legislators, state officials and district attorneys.



In addition to the Attorney General's role as lawyer for the state and for the public interest, the Attorney General is charged with administering and enforcing a wide variety of laws that benefit New Mexico residents. These include laws that protect consumers' rights, such as the Unfair Practices Act, and laws intended to make state government more transparent and accountable, such as the Open Meetings Act and the Inspection of Public Records Act.

Deputy Attorney General Tania Maestas oversees 10 division that include both legal and operational within Civil Affairs:

- ◆ Information Technology
- ◆ Training and Professional Development
- ◆ Executive Services
- ◆ Communications
- ◆ Human Resources
- ◆ Litigation
- ◆ Consumer and Environmental Protection
- ◆ Open Government
- ◆ Consumer and Family Advocacy Services
- ◆ Treaty of Guadalupe Hidalgo



INFORMATION TECHNOLOGY

DIVISION



*Scott Stokes,
Chief Information Officer*

NEW FOR 2017

Hardware and Infrastructure: The Information Technology Division streamlined the computer hardware the agency is using to improve controls. The Division designed, procured and implemented a new state-of-the-art Information Systems Infrastructure which includes all new Access Control systems, Video Surveillance systems, Backup and Disaster Recovery Systems, Network Security Appliances, Secure Wireless Access points, Web Content Filters, Data Servers and Network Switches. Use of this equipment assures that all OAG Data is secure, increases productivity and allows communications across all three offices. Infrastructure improvements allow IT staff to focus on providing outstanding service to all OAG Employees. Additionally, the IT Division made significant data center and infrastructure improvements for mission critical systems, imaging software, backup software, and other major improvements.

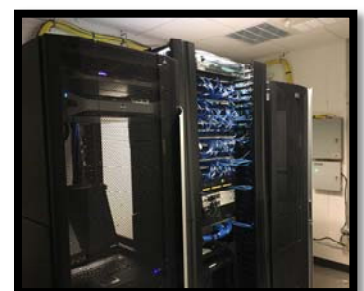
Network Security: With the procurement and installation of new state-of-the-art Information Systems equipment, the division deployed new antivirus and anti-malware software; implemented web content filter software to manage, report and control Internet use within OAG standards and practices. IT also deployed a sophisticated software that accommodates remote management of all OAG computers. The software improves security by providing a real-time systems monitoring, security patches and system updates. With these mechanisms in place the OAG received a Cybersecurity posture rating of Extremely Secure according to assessments performed by RiskSense, a trusted cyber risk company. At this time we have put stringent security mechanisms in place to adequately protect our network devices allowing us to maintain strict access controls in conjunction with comprehensive log controls and analysis.

The Information Technology (IT) Division safeguards and manages the Information Technology infrastructure and provides service to all employees of the Office of the Attorney General (OAG). The OAG IT Division goals are to:

- ◆ Support the mission and vision of the Office of the Attorney General.
- ◆ Protect New Mexicans and
- ◆ To lead innovatively through technology by proactively finding solutions and responding to the evolving technological needs of the agency.

Investments in information technology are driven principally by the desire to improve the way work is done; to improve decision making; to adhere to various laws, regulations, standards and policies; and to help the agency manage its risks.

In 2017, the OAG devoted substantial resources to the area of information technology, updating hardware and software to allow the OAG to work at the forefront of technology. The Information Technology Division pursued the goals of efficiency, security and modernization of the Office's Information Systems.



Information Technology Division cont'd

Constituent Response and Call Management: The Division has implemented a true Contact Center environment that includes an Automated Attendant greeting to efficiently route callers to the advocates, appropriate Division, or the information they need. We can now track calls and provide data that shows how many calls we receive on a daily basis for each Division. Significant improvements have also been made to manage complaint submissions from the public. These include new Electronic Complaint System to be implemented in early 2018 to allow New Mexico residents to transmit information, such as complaints, electronically to the OAG.

Software Applications

The Division developed and upgraded internal and external software applications to help the agency's evolving needs to track data and increase productivity.

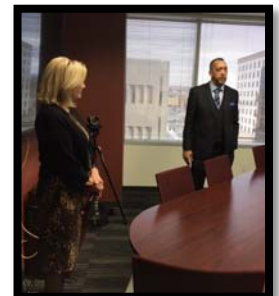
- ◆ **LegisTrack:** Designed by the OAG to facilitate the management of bills during a legislative session. The application's key feature is the ability to manage analysis requests from LCS. As a request is made and entered into LegisTrack, the application manages all documentation, notifications, and verifications via a single repository. LegisTrack greatly improves the process of managing hundreds of requests and their corresponding documents where deadlines are an important factor. In addition to bill analysis management, LegisTrack also includes functionality to manage OAG positions, bill notes, and events.
- ◆ **NM-COROS Enhancements:** One of the most advanced online Charity Registration systems available in the nation. The web based application allows charities to enter all of their registration information online, and upload PDF copies of required documents. Since opening to the public in early 2010, nearly 7,700 charities have submitted 38,400 registrations using NM-COROS. Prior to NM-COROS, there was no systematic way to ensure charity compliance. Automated requirement and delinquency checks in NM-COROS have ensured charities remain in compliance with our office, and to date the office has collected over \$651,000 in reinstatement fees.
- ◆ **OAG-IMS Enhancements:** The Information Management System (IMS) is used to maintain a record of matters and parties for all Divisions of the office. Recently, the application was updated to include a Consumer/Customer complaint intake wizard, which helps to ensure key information about the complaint is included in the database. The enhanced program includes a user friendly series of questions, guiding OAG staff to enter required information. In addition to the wizard, additional modules were added which allow the tracking of business industries as well as transaction history. The transaction history includes details of the initial transaction by constituent and any restitution acquired. Also added was the ability to mark activities as work product.



*James Maddox,
IT Project Manager*



*Danial Rodarte,
Database Project
Manager*



TRAINING AND PROFESSIONAL DEVELOPMENT DIVISION



*Tamarra Howard,
Training & Professional
Development Director*

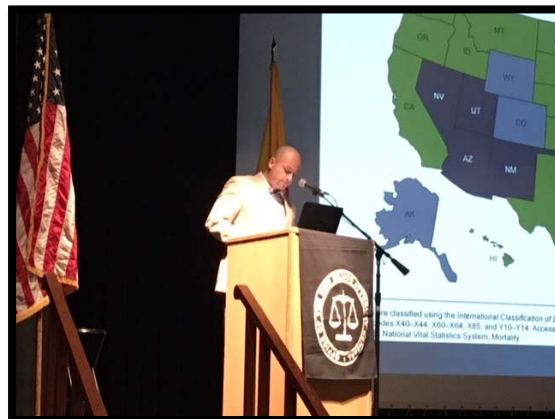
The Training and Professional Development Division is responsible for the development, implementation and monitoring of training programs within a diverse organization. The Division is responsible for building solid cross-functional relationships within the agency and:

- ◆ Facilitates and tracks continuing legal education (CLE);
- ◆ Provides leadership development education;
- ◆ Provides logistical support, course development, delivery, evaluation, process measurement, and cost management;
- ◆ Evaluates needs of the agency and plans training programs accordingly;
- ◆ Performs frequent local and nationwide research in order to find the most applicable training at little or no cost to the OAG;
- ◆ Serves as a faculty member for the National Attorneys General Training and Research Institute assisting with developing training goals to ensure the OAG is equipped with education that furthers its ability to support the OAG and its mission; and
- ◆ Ensures mandatory trainings including OSHA, Civil Rights and ADA.

NEW FOR 2017

The Training and Development Division supports a variety of training, events and employee wellness programs. Highlighted below are some of those programs:

- ◆ NM Crisis Training
- ◆ Opioid Abuse Consumer Protection and Enforcement Training
- ◆ Project Open (Opioid Prevention and Education Network) Training
- ◆ Drug Take-Back Day
- ◆ Leadership for Justice Training
- ◆ In-house Westlaw and Advance CLEAR training and development
- ◆ In-house SHARE Human Capital Management System (HCMS)



Training and Development cont'd

KEY OUTCOMES

Opioid Abuse Consumer Protection and Enforcement

The OAG in partnership with NAGTRI held an Opioid Abuse Consumer Protection and Enforcement Training designed to equip the legal staff investigators, consumer advocates of the Attorney General's office allied with professionals and the public in the area of opioid abuse. The training provided is an overview of issues relating to prescription opioids, including the dangers of abuse, the history of prescribing practices, the development of "pill mills," and the impact of off-label marketing and online pharmacies. Participants learned about the implications of opioid abuse on society, including health care costs, the potential for fraud, the dangers of "drugged driving" and the environmental damage caused by the improper disposal of prescription drugs. **Outcome:** Over 200 people attended; the training consisted of policy advisors and the public and led to the formation of the Project OPEN steering committee involving the Attorney General and several District Attorneys throughout the state.

Drug Take-Back Day

Established with the DEA a drug take-back site and participated in the National Drug Take-Back Day held this year on October 27, 2017. **Outcome:** Utilized internal special agents and collected four (4) pounds of medications, opioids, and drugs.

Employee Professional Development

Thompson Reuters CLEAR Training- Four (4) trainings held to help investigators streamline their research and allow for easier data search that saves time.

SHARE

Facilitated the new SHARE HCM system training to ensure all employees were familiar with the new state system to ensure all employees are paid timely.

Leadership for Justice Training

A Two (2) Day In-house CLE training held for the staff attorneys covered both civil and criminal topics with guest speaker from the National Attorney General Association and Special Counsel from the Colorado Attorney General's Office, Nurse Practitioner from the University of New Mexico and our internal staff experts. This training provided 12.5 Credits with 3.0 ethics credits. This training was a cost-effective effort for the agency developing skills and knowledge by utilizing a variety of interests and focusing on specific skills relevant to the agency. **Outcome:** Approximately \$20,000 in cost savings by hosting the training in-house. There were no registration fees or travel costs incurred by the agency, and the staff was able to work around its schedules to attend the trainings needed for CLE credits.

AG Balderas Leads the Way



in Training and Development by...

bringing valuable education to his staff and the public at several events throughout the state.

Project OPEN (Opioid Prevention and Education Network) Training

Attorney General Balderas formed a statewide partnership with the District Attorneys and law enforcement agencies to target prevention, education and awareness of the opioid abuse problem. The program enhances the participants' knowledge and understanding of opioid addiction and the complex issues involved. The primary goal is to afford participants the opportunity to explore program materials and solutions to addressing the opioid epidemic. **Outcome:** The Training Division identified counties with the highest rates of overdose and provided two (2) trainings one in Rio Arriba and Dona Ana County to help educate over 300 attendees on using effective strategies for reversing the epidemic.

EXECUTIVE SERVICES

DIVISION



*Michelle Garrett,
Executive Services Director*

The Executive Services Division (ESD) focuses on improving and maintaining operational excellence by helping the agency to eliminate duplication, waste and inefficiencies. The Division reports to the Deputy Attorney General and acts independently to initiate, implement and document operational excellence activities and coordinate, plan, document and fully manage the implementation of those activities. The Division maintains versatility and responds positively to periodically shifting of project focus and recognition of the importance of maintaining team flexibility vital for success of the OAG.

The primary responsibility of the Executive Services Division is to achieve a comprehensive understanding of all the agency's operations including each Division's connectivity and interdependency. ESD works in collaboration with IT and the functional Divisions in order to be successful.

The Division is heavily involved and focuses on operational excellence through the implementation of new processes, design, and opportunities. Most importantly, the Division helps develop the blueprint for successful implementation that is broadly applied to various initiatives and new agency endeavors.

NEW FOR 2017

- ◆ Project lead for the Albuquerque Plaza office move January 20, 2017;
- ◆ Negotiated a \$150 thousand secure store front project for the Santa Fe Office;
- ◆ Project oversight of the Villagra window replacement, refurbishment and stucco resurfacing project totaling \$1.3 M;
- ◆ Editing and publishing of 2017 Annual Report;
- ◆ Development of employee policies and procedures for the Agency;
- ◆ Negotiated the installation of clean agent suppression for the Santa Fe IT server rooms;



Albuquerque Plaza Office Move

- ◆ 2017 Annual Recognition, Award, and Service ceremony
- ◆ Research information and signed a lease agreement with Enterprise car rental for use by our Law Enforcement Agent's (LEA) for undercover work.
- ◆ Negotiated the leasing of 8 vehicles from Merchants Fleet for ICAC and ESD Facility Coordinators at each location. This is now a total of 27 of 49 leased vehicles allowing the agents in the agency more autonomy to perform their jobs safely.
- ◆ Audited and updated the Verizon and Xerox accounts; renegotiated the OAG contractual agreement with a cost savings of \$6 thousand per month for Verizon and \$20 thousand per year for Xerox.

Executive Services Division cont'd

KEY OUTCOMES

- ◆ On January 15, 2017, the Office of the Attorney General took possession of new office space located at the Albuquerque plaza. After a year of negotiations and planning we were able to move into the 31 thousand sq. ft. of newly remodeled space in record time over a holiday weekend. The new lease agreement allowed us to occupy a class A building housing up to 227 employees for less than what we were leasing our old building for. The new space was specifically designed to meet the unique needs of the office and the Attorney General. We remained on schedule and within our budget. This was a million dollar remodel project involving IT and the Executive Services team.
- ◆ To design and construct a secure entry/lobby for the Bardacke Building in Santa Fe at the request of the AG to help keep our office and employees safe. Construction began in June and was completed in October 2017 (Budget: Design - \$15,125 Construction - \$90,000).

Clean Agent Fire Suppression for Server Room was upgraded to a current fire suppression system in both server rooms and in a second floor server room at the Santa Fe Office. The clean agent system was needed in order to protect the OAG server equipment and data. The project included removal of old system. The cost of this project was over \$107 thousand dollars and included two IT rooms and a mechanical room on the 2nd floor.



Grand Opening of the new Santa Fe office storefront

ShoreTel VoIP and Digital Phone System Creation and approval of Statewide Price Agreement in conjunction with ShoreTel and State Purchasing. Performed an assessment and internal analysis of the Agency's needs; purchased all communication equipment and organized the installation at all NMAG facilities. Executed the termination of DoIT phone services. Assisted in the deployment of the call center and call flow process. Worked on recouping thousands of dollars in overages from DoIT; Over \$100 thousand in savings annually, increased productivity, secure phone and fax lines, and more reliable service.



Albuquerque Plaza remodel and moving team: Daniel Rodarte, James Maddox, Scott Stokes, Tamarra Howard, Edgar Resendiz, Matt Bustos



Team Leasing Initiative Award



2017 Recognition Awards Ceremony for successful completion of the Albuquerque Plaza Office remodel and move



Bardacke Lobby Secure Storefront.



Villagra window & building restoration project

COMMUNICATIONS & HUMAN RESOURCE DIVISIONS



*James Hallinan,
Communications Director*

The Communications Division is focused on transparently informing New Mexicans, communicating quickly and accurately with the media while protecting the integrity of ongoing investigations and litigation, and assisting local law enforcement agencies and municipalities to better communicate with their constituents. In a marked budget decrease from the previous administration, the Division is staffed by only one employee who ensures New Mexicans in all corners of the state are aware of the services available and actions taken by the Office of the Attorney General on their behalf. The Communications Division trains and assists public information officers around the state and supports Joint Information Centers (JICs) during emergencies in New Mexico offering crisis communications expertise to ensure the public is properly informed in a timely fashion to ensure its safety.



*Valerie Martinez,
Human Resource Director*

The Human Resource Division is focused on its employees, who are among the Office of the Attorney General's most valuable and valued resources.

In an atmosphere where we serve and protect New Mexicans, OAG employees are responsible for honorably carrying out the constitutional and statutory responsibilities of the Attorney General. We are proud of our employees, all of whom maintain the highest level of integrity as they perform their job duties.

We are committed to attracting and retaining the best and brightest in the workforce in order to support our mission of excellence.

At the Office of the Attorney General, we aspire to provide a positive work environment that respects all individuals and encourages excellent work performance and high morale. We provide comprehensive benefits that help employees achieve work-life balance and strive to offer programs and services that promote the Office of the Attorney General's commitment to affirmative action, equal employment opportunity, diversity, and inclusion.

LITIGATION

DIVISION



Litigation Division

NEW FOR 2017

The Litigation Division successfully prosecuted over 250 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. Assistant Attorneys General Rebecca Parrish, Jose Puentes, Josh Granata, Susan Sullivan, and Julia White handled the bulk of that caseload, which resulted in the payment to the State of tens of thousands of dollars in fines and in other disciplinary action, including the revocation of licenses held by the most egregious offenders. Assistant Attorneys General Sean Cunniff, Nick Sydow, Rebecca Branch and Ari Biernoff also prosecute on behalf of licensing boards.

Tobacco Litigation

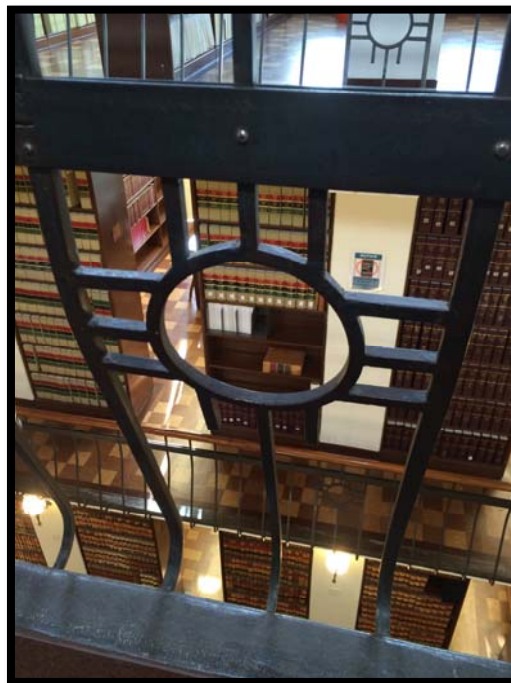
The Litigation Division continued its significant efforts by overseeing and litigating New Mexico's compliance with the Master Settlement Agreement, the landmark 1998 settlement agreement between the nation's largest tobacco manufacturers and 52 states and territories.

- ◆ Currently there are several civil litigation matters pending in the NM Court of Appeals, including a pending ruling that may favor New Mexico. There is a proposed order of the 2003 arbitration panel and a ruling in the defendants favor requiring New Mexico to participate in a multiparty (rather than single-state) arbitration of the NPM Adjustment dispute and several major tobacco companies. That arbitration concerned the adequacy of New Mexico's efforts to “diligently enforce” our tobacco escrow statute in the year 2004. The 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 Master Settlement Agreement. Additionally, a new lawsuit by a non-participating manufacturer, Grand River Enterprises, was filed against New Mexico for them and is listed on the Tobacco Directory. A Motion to Dismiss that lawsuit is still pending. All of these efforts required a substantial portion of the staffing resources in the Litigation Division. Assistant Attorney General Ari Biernoff led the effort along with Assistant Attorney General Julia White and staff personnel Phillip Bachicha, Carol Ann Ortiz, Janet Otero, and Marcie Maestas.

Litigation Division Cont'd

KEY OUTCOMES

- ◆ Assistant Attorney General Ari Biernoff is representing the State interests in road access to State trust lands used by New Mexican citizens for recreational purposes. That litigation goes to trial in March 2018.
- ◆ Assistant Attorneys General Ari Biernoff, Julia White and Rebecca Branch are representing the Department of Corrections concerning the historic Duran consent decree governing prison conditions in certain New Mexico correctional facilities. A number of compliance issues have arisen in this long-dormant case.
- ◆ 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 on behalf of the State, ensuring that hundreds of thousands of dollars that are owed to the State were paid.
- ◆ Assistant Attorney General Sean Cunniff represented the State in actions filed pursuant to the Fraud Against Taxpayers Act. As the leading qui tam attorney in the State, Mr. Cunniff handled matters that returned funds to State coffers. Mr. Cunniff and Ari Biernoff settled a lawsuit against Presbyterian Health Plan, Presbyterian Network, and Presbyterian Insurance Co., for fraud based on the underpayment of taxes on premiums received or written, for \$18.5 million dollars.
- ◆ The Litigation Division represented judges from nearly every judicial district in various original jurisdiction proceedings before the New Mexico Supreme Court. The Division was also involved in several cases brought against State agencies under the Inspection of Public Records Act, including the successful defense of the Attorney General's Office in separate actions filed by healthcare facilities that were targets of the Attorney General's Medicaid Fraud Unit concerning the application of the law enforcement exception to attorney client privilege with outside counsel.



CONSUMER AND ENVIRONMENT PROTECTION DIVISION



*Cholla Khoury, AAG
Consumer & Environment
Protection Director*

The Consumer and Environment Protection Division (CEPD) is responsible for protecting New Mexico's residents, economy, environment and natural resources. Many of the civil plaintiffs suits brought on behalf of the State of New Mexico are handled by CEPD. The Division is responsible for investigating and addressing business practices or actions that threaten New Mexico families, legitimate businesses, our environment or natural resources. As the civil law enforcement Division, CEPD brings suit on behalf of the State in areas such as consumer protection, antitrust, charitable solicitations, environmental protection and other areas of civil law. The Division specializes in complex and thorough investigations into some of the biggest companies in the world. The Division serves as the small business and residential consumer advocate in front of the Public Regulation Commission (PRC), litigating against investor owned utilities to keep utility rates low and ensure that New Mexicans have access to clean, affordable energy. Additionally, the Division maintains a registry of charitable organizations that exist, operate, or solicit in the State of New Mexico.

NEW FOR 2017

- ◆ CEPD initiated 11 new cases in State or Federal court in New Mexico and in the District of Columbia and two other states. Six of those cases were brought to protect New Mexico's delicate environment while the remaining five cases were brought to protect New Mexican consumers. Besides the new cases filed, CEPD maintained active litigation in nine other consumer protection litigations filed prior to 2017.
- ◆ CEPD has reviewed or initiated investigations involving anticompetitive pricing, healthcare fraud, automotive sales, false advertising, data breaches, real estate fraud, pharmaceuticals, mortgage fraud and financial fraud.
- ◆ Attorneys in CEPD collaborated with Attorneys General from all 50 states and with Federal agencies in multistate investigations into companies operating across state lines who violated consumer protection laws.
- ◆ The utilities section of CEPD participated as consumer advocate in seven cases in front of the PRC. These cases involved administrative rule-making as well as general rate cases and specific project requests.
- ◆ CEPD maintains 9,213 charities registered in its database and has undertaken an in-depth review of every charity's registration status to ensure compliance with state laws. Through registration and enforcement, CEPD has assisted nearly 450 charities in resolving their delinquency issues.

Consumer and Environment Protection Division cont'd

KEY OUTCOMES

Takata Airbags

CEPD brought suit on behalf of New Mexico against Takata the manufacturer of automobile airbags, Takata Corporation, and more than ten auto manufacturers for installing dangerous airbags in cars. New Mexico was one of only three states to file suit against the corporation, which filed bankruptcy in June of 2017.

Dollar General

The Division brought suit against Dollar General Corporation for selling obsolete motor oil. CEPD's investigation discovered that Dollar General had been selling motor oil that was unsuitable for modern engines without telling consumers. The oil which Dollar General had sold without proper identification cause engine damage and increased emissions

Opioids Manufacturers

The Division brought an action against opioid manufacturers and distributors for the role they have played in contributing to New Mexico's opioid epidemic. The suit alleges violations of state law including unfair and deceptive trade practices, fraud against taxpayers, Medicaid fraud, and racketeering, as well as statutory and common law public nuisance, negligence and negligence *per se*.

California and New Mexico v. BLM

In collaboration with the Attorney General of California, the Division challenged the Trump administration's illegal delay of implementation of the Waste Prevention Rule (regulating methane from oil and gas operations on federal land). On October 4, 2017, the

court ruled in favor of the Attorneys General, forcing the administration to immediately implement the rule.

California and New Mexico v. DOI

In collaboration with the Attorney General of California, the Division Challenged DOI's illegal postponement of valuation reform rule for oil, gas, and coal royalties which would go to increase funding to New Mexico's schools. The Court granted motion for summary judgment in New Mexico's favor, declaring postponement illegal but declining to vacate because repeal of the rule would become effective one week later.

Homeownership Preservation Program

The Division continued to assist New Mexican consumers facing foreclosure. The Division achieved more than \$2,000,000 in foreclosure assistance to New Mexicans through loan modification or by assisting consumers in stopping or avoiding foreclosure.

Wind Energy Jobs Agreement

The Division negotiated with Southwest Public Service Company (SPS) and Xcel Energy to drive \$57,000,000 to New Mexico resident businesses during the construction of the Sagamore Wind Project. Besides creating jobs and allowing New Mexico businesses to develop expertise in renewable energy, the agreement provided for a grant to Mesalands Community College's North American Wind Research and Training Center in

Tucumcari.

Settlements

In 2017 CEPD achieved settlements with the following companies in resolution of investigations:

- ◆ Western Union: \$48,946.49
- ◆ Target: \$205,163.99
- ◆ Nationwide: \$113,705
- ◆ My Pillow: \$300,000
- ◆ G M: \$1,315,164.97
- ◆ Johnson & Johnson: \$453,474
- ◆ BIPI: \$158,242.03
- ◆ Western Mortgage: \$375,000



Consumer and Environment

Protection Division cont'd

Texas v. New Mexico

Families, businesses and communities all rely upon our limited water resources as an absolute necessity to life and prosperity in New Mexico. Protection of these waters against claims by downstream interests is of paramount importance to continue the historical stewardship of waters to meet our current needs within New Mexico and for the enjoyment of our waters to serve future generations. Attorney General Hector Balderas serves as the "point of the spear" for the protection of New Mexico's lawful use of waters in the Rio Grande Basin against unfounded claims by downstream interests seeking to expand their own water supply to the detriment other individuals, farmers, and commerce in New Mexico.

The State of New Mexico did not seek out the case of *Texas v. New Mexico*. Instead, the case began on January 27, 2014, when the United States Supreme Court allowed the State of Texas to file its complaint against the State of New Mexico, seeking to enforce rights under the Rio Grande Compact, which apportions the waters of the Rio Grande Basin among the States of Colorado, New Mexico, and Texas. The State of Texas, seeking to expand its water supply, filed a lawsuit that seeks to limit the lawful use of waters allocated to New Mexico in the Compact and deliver more water to downstream interests in Texas. The United States Supreme Court also invited New Mexico to file a motion to dismiss under the Federal Rule of Civil Procedure 12(b)(6). The United States filed a motion for leave to intervene as a plaintiff and a proposed complaint in intervention based on several distinct federal interests that are at stake in this dispute over the interpretation of the Compact. On March 31, 2014, the Court granted the United States' motion for leave to intervene as a plaintiff.

New Mexico moved to dismiss the complaints filed by Texas and the United States. The First Interim Report of the Special Master recommended that the Court deny New Mexico's motion to dismiss the complaint filed by Texas. As for the United States' complaint in intervention, the Special Master recommended that the Court grant New Mexico's motion to dismiss to the extent the United States asserts claims under the Compact, but deny the motion to the extent the United States asserts claims under federal reclamation law.

The United States, New Mexico, and Colorado filed exceptions to the Special Master's Report. On October 10, 2017, the Court denied New Mexico's motion to dismiss Texas's complaint.

The United States took exception to the Master's recommendation that the United States complaint in intervention should be dismissed to the extent that it asserts claims under the Compact. Colorado's first exception contends that the Court should limit the claims of the United States to those based on the 1906 Convention with Mexico (US/Mexico Treaty). In their reply briefs, Colorado and New Mexico opposed the United States' exception. As sovereign States that are parties to the Compact, both States have a significant interest in the Court's resolution of the United States' exception.

The parties appeared before the United States Supreme Court on January 8, 2018, to present oral argument on the exception of the United States and the first exception of Colorado. Essentially, the argument was limited to the role that the United States, as represented by the Office of the Solicitor General, will play in this litigation going forward. The United States Supreme Court did not request and did not hear arguments related to any other matters at that time. Therefore, the heart of the case--the merits of Texas's allegations against New Mexico--has not yet been argued to the justices of the Supreme Court.

As this summary shows, the case remains at an early stage. Trial, if this case goes to a trial, could be years away. Because Texas, and not New Mexico, initiated the litigation, only Texas has the power to end the case unilaterally by voluntarily dismissal. There is no indication, however, that Texas intends to do anything other than aggressively pursue the course it charted by bringing this suit against New Mexico and its people. As a defendant, New Mexico must continue to defend its rights vigorously under the Rio Grande Compact.

The defense of New Mexico's water allocation is a complex task that is based upon sound scientific and legal principles. Attorney General Balderas continues to fully address the complete spectrum of legal, technical and water administration issues in the Rio Grande Basin that serves the lawful interests of New Mexico citizens. The New Mexico Attorney General's office is developing a robust legal and technical case to protect New Mexico's lawful entitlement to water in the Rio Grande Basin.

OPEN GOVERNMENT

DIVISION



*Sally Malave, AAG
Open Government
Director*

The Open Government Division has three primary areas of responsibility. First, it provides legal representation to 80 boards, commissions and state agencies, including nearly three dozen professional licensing and environmental permitting boards, the Human Rights Commission, the Law Enforcement Academy Board, and the Secretary of State's Office, to name a few. As counsel to these entities, the nine dedicated attorneys within the Division routinely travel around the state to attend their clients' regular and special meetings, administrative disciplinary hearings, and rulemaking proceedings to ensure compliance with their clients' enabling legislation and the Open Meetings Act, as well as to provide counsel as needed. The Division also provides representation for clients in front of the State's district and appellate courts. Second, the Division researches and drafts Attorney General opinions and advisory letters in response to requests by state legislators, state officers, and district attorneys. Third, it promotes public transparency by reviewing and responding to complaints alleging violations of the Open Meetings Act (OMA) and Inspection of Public Records Act (IPRA) and by providing state-wide training to governmental bodies, media organizations, and the public regarding their rights and responsibilities under the Acts.

Other Division responsibilities include the review and approval of state professional services contracts for compliance with certain provisions of the Governmental Conduct Act, issuing opinions, approving school district general obligation bond issues, approving agreements between local governments and private jail operators, review closing agreements from the Taxation and Revenue Department, assisting with review and approval of contracts between the Office of the Attorney General and outside parties, and providing research and bill analysis during the legislative session.

NEW FOR 2017

- ◆ In 2017, attorneys in the Division attended a total of 798 proceedings, including regular board meetings, disciplinary hearings and rulemaking proceedings. Of these meetings, 69 were held outside the Albuquerque/Santa Fe corridor. The Division oversaw the successful promulgation of rule changes for various clients after the passage of House Bill 58, amending the State Rules Act. In connection with HB 58, it currently is engaged in promulgating a default procedural rule governing public rules hearings for use by agencies that have not adopted their own procedural rules.
- ◆ The Division continued to experience a substantial litigation caseload in 2017, currently handling approximately 35 judicial appeals and similar court proceedings on behalf of state agencies, boards and commissions. Notably, Assistant Attorney General Lori Chavez guided the New Mexico Dental Health Care Board and the Real Estate Commission as these boards heard and deliberated on certain highly-contested disciplinary proceedings. She also represented the Public Employee Labor Relations Board in several appeals currently making their way through the district courts. In late summer, Assistant Attorney General Marlo Aragon took over representation of the Racing Commission and currently is handling almost 20 matters in various stages of appeal in both state and federal district courts.

Open Government Division cont'd

NEW FOR 2017

Over the course of the year, Assistant Attorney General Dylan Lange capably handled multiple arbitrations and petitions to confirm arbitration awards for the Secretary of State, one of which included a judgement entered in the SOS's favor; a petition for cancellation for *SOS v. Board of County Commissioner for Hidalgo County* where the SOS granted relief for the removal of ineligible voter registration certificates; two affirmative lawsuits for the OAG on which the Division provided assistance, including an IPRA lawsuit in *Attorney General v. Espanola School District*, and A Writ of Quo Warranto for *Attorney General v. Analee Maestas*, which resulted in Maestas stepping down from public office; two state court cases, *Legislative Council v. Governor and Secretary of State*, where a cert was granted to the Supreme Court, and *Cummings v. Lewellen*, an IPRA lawsuit which has since been dismissed; and three Federal Court cases, most notably, *Rocky De La Fuente v. Secretary of State* where the Defendant's motion to dismiss was granted. Assistant Attorney General Lange also assisted the Board of Regents for the Museum of New Mexico in overseeing the Centennial Capital Campaign, an effort by the New Mexico Department of Cultural Affairs, the Board of Regents and the Museum of New Mexico Foundation to raise \$10 million to renovate the Halpin Building to be a satellite museum to the NM Art Museum.

KEY OUTCOMES

The Office of the Attorney General issued six advisory letters in 2017 on a variety of topics, including State liability for Brine Well Remediation; regulation of gambling in the Town of Silver City; transfers from the Enhanced 911 Fund; provision of paid leave to a teacher serving as Legislator; and housing infrastructure and the Anti-Donation Clause. Administrators International; Governmental Conduct Act and OMA training at the OAG Community Summit; and the OAG Continuing Legal Education Leadership for Justice Retention Training. Attorneys also provide training and guidance to Division clients on OMA/IPRA, Governmental Conduct Act, State Rules Act, and other applicable state laws.

The Division supervised the production of 77 OMA/IPRA determinations and answered countless phone calls from public officials and members of the public regarding OMA, IPRA, and other aspects of government practice. It provided 12 statewide trainings on OMA/IPRA compliance, traveling to Alamogordo, Los Lunas, Roswell, Santa Rosa, Estancia, Gallup, Farmington, Carlsbad, Albuquerque, and Tierra Amarilla, as well as Santa Fe. Almost 800 people were reached at these events. The Division houses the records custodian for the OAG, who in 2017 received and responded to 480 requests to inspect public records held by the OAG, a 30% increase from last year.

The Division received and approved 33 school bonds, totaling approximately \$118,470,000.00 and reviewed over 100 contracts for Governmental Conduct Act compliance and Legal Sufficiency, in which OAG was a party in 16. The Division also approved five Closing Agreements negotiated by the Taxation and Revenue Department.

Division attorneys also participated in other related trainings, including individual OMA/IPRA trainings to the New Mexico Association of School Business Officials and the Regulation and Licensing Department; individual IPRA trainings to Secretary of State Office, the New Mexico Municipal League, and the New Mexico Chapter of the Association for Records Managers and During the 2017 Legislative Session, Open Government received, routed and administered 424 requests for bill analysis from the New Mexico Legislative Council Service and others, including drafting 41% of the bill analyses for the OAG.

CONSUMER AND FAMILY ADVOCACY SERVICES DIVISION



*Jenny Lusk, AAG
CFASD Director*

The Consumer and Family Advocacy Services Division (CFASD) closed the year 2017 having worked on problems presented by almost 5,000 separate New Mexico consumers, working to mediate between them and local and national businesses, helping them find other helpful resources and compiling a powerful database of particularized facts and problems available for use by our litigators at the Office of Attorney General.

Attorney General Balderas has made a commitment to New Mexico consumers that his eight-person advocacy staff will respond to most complaints within 72 hours and has pledged that even when his office receives complaints that go beyond the authority and scope of the office, advocates will attempt to link constituents with other agencies.

The Attorney General's Advocacy Division is the first point of contact for all complaints to the Office of Attorney General. Advocates in the Division answer phones, take in walk-in complaints and respond to complaints filed online at www.nmag.gov, examine and refer them to other OAG Divisions including Medicaid fraud, criminal investigation and Open Government. Advocates work daily to get complainants fair sums due to them through inadvertent or knowing business mistakes, to help them access services in a complicated system of government agencies and to find basic information.

NEW FOR 2017

- ◆ In addition to thousands of telephone calls, during Calendar Year 2017 the Division received, resolved or referred more than 4626 different complaints from consumers by the beginning of December. The complaints included hundreds of merchandise quality problems—lumpy mattresses, substandard new appliances, botched roofing jobs and items returned without a promised refund—to problems with burdensome, unfair or high-interest contracts for solar installations, cell and cable television service, timeshares and other maintenance contracts.
- ◆ Tracking scams across the state—from scammers demanding utility payments by wire transfers when they have no connection to the utilities providers to scammers impersonating wire payments from concerned grandparents—the advocates also collect and broadcast alerts on common consumer fraud techniques.
- ◆ The information collected and documented by advocates resulted in a powerful set of consumer complaints against a high-dollar homebuilder and against a fraudulent construction business as well helping to document violations of the State's new Data Breach Notification Act by a credit reporting agency that lost data on 143 million persons and a ride-hailing firm that paid ransom to hackers rather than reporting the breach of some 57 million files. Among other accomplishments, the Attorney General's consumer advocates also persuaded the landlord of an elderly woman in low-income housing to exterminate the bed bugs that plagued his apartment complex, and intervened to get immediate emergency care for a bed-ridden person with a disability whose caregivers left without notice, leaving the person with no way to get to the toilet.

Consumer and Family Advocacy Services Division cont'd

NEW FOR 2017

- ◆ By year-end, the advocates were preparing for a significant technology upgrade to aid the Office of Attorney General catalogue, identify and index consumer complaints in a powerful new way. With the new system, effective the first day of 2018, information available through caller ID automatically populates the Attorney General's files, advocates have more uniformity in information gathered so that various consumer complaints can be accurately compared, and web-based complaints are populated by consumers on the spot.

KEY OUTCOMES

- ◆ During the 2017 session, the Office of Attorney General supported the Data Breach Notification Act, sponsored by Rep. Bill Rehm (R-Bernalillo Dist. 31), which passed on its fourth iteration in the New Mexico legislature. Passage of the bill allowed the Attorney General to hold businesses accountable when they collect personally identifiable information but fail to protect the information gathered. Now, New Mexico is among the 48 other states that require timely notification of a breach of personally identifiable information. Because of the passage of the bill now codified at NMSA 1978, Sec. 57-12C-1 through 57-12C-12, for the first time the Attorney General had authority to require timely notification from data collection firm Equifax when some 143 million files were breached. The Attorney General also wrote the ride-hailing firm Uber demanding information on its decision to cover up the breach of some 57 million files rather than to provide legally required notice.
- ◆ The numbers of advocates employed by the Attorney General has been reduced over the past year because of budget cuts. However, through technological improvements, the effectiveness of the Consumer and Family Advocacy Services Division has not been diminished, advocates are every bit as available as ever and are perhaps even more effective than ever, as they continue to cross-train and mentor each other in consumer rights and responsibilities.
- ◆ The Attorney General's policy shift to emphasize mediation over litigation between consumers and car dealers has had a significant impact in the agency's ability to correct mistakes, right wrongs and prevent lawsuits.
- ◆ The Attorney General selected Jerri Mares, who was the Dealer Principal at her father's automobile dealership, to lead the mediation program. She serves as an especially effective go-between to resolve contract, repair CFASD and financing concerns voiced by consumers, to present educational seminars to new and used automobile dealers so they may better prepare to comply with New Mexico legal standards, and to educate other Advocacy staff to meet challenges of handling automobile transaction complaints. Under the new mediation program, both consumers and businesses are seeing improvements: Ms. Mares provides consumers education and information and helps to eliminate misunderstanding between business and its customers. Ms. Mares trains new and used automobile dealers in legal requirements and lets them know that the Advocacy Division is available to mediate between them and consumers. Today, the mediation program makes information and communication more accessible, makes resolution quicker and more effective and helps to develop strong bonds directly between dealerships and purchasers.

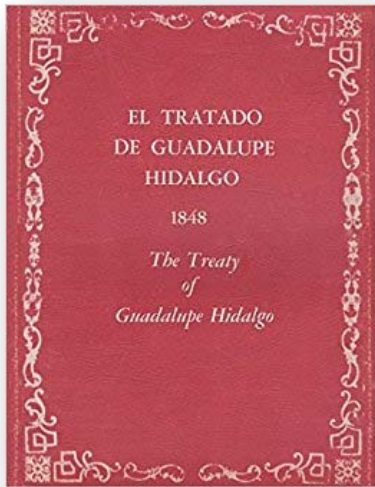
Consumer and Family Advocacy Services Division cont'd

KEY OUTCOMES

- ◆ During the last months of Calendar Year 2017, Ms. Mares single handedly was able to settle disputes between consumers and automobile dealers worth approximately a quarter million dollars, with \$116,000 in October alone. That number included refunds, repairs and services credited. Ms. Mares was able to recoup money owed to consumers, including winning a dealer's agreement to refund the full cost of a car whose condition and history was misrepresented. At the same time, she was able to educate consumers on how lenders calculate interest and how payments are distributed. Over the course of the year, Ms. Mares continued to develop strong positive communications between the Office of Attorney General and both used and new automobile dealers working together to avoid the need for costly litigation, to the extent that the dealers are now contacting OAG offices to discuss best practices. Dealers now report that the numbers of complaints they receive is drastically reduced because the relationship is non-confrontational and more collaborative than in years past. Further, consumers are now better educated as to their rights and the limits of dealer obligations. Both describe the mediation program as a 360-degree change from previous administration practices and as having a positive impact on New Mexico families and businesses.
- ◆ At the Attorney General's personal instruction, the Consumer and Family Advocacy Division also dedicated disability advocate Amira Rasheed to problem-solving for persons in the disabilities community. Ms. Rasheed, chair of the Developmental Disabilities Planning Council, has earned two college degrees while using a wheelchair to access services and maintain community involvement. The Attorney General asked that she become involved, not only aiding consumers who struggle to bridge federal, state and local organizations in the complicated system of service delivery for persons with disabilities but also serving as the representative to the adult guardianship commission among other groups including the University of New Mexico Center for Development & Disability's Partners for Employment
- ◆ Attorney General Balderas established the Immigration Coordinating Council to cope with increasingly vulnerable New Mexico residents and their families. The Council, comprised of representatives of local governments, county detention centers, civil rights and other advocacy and church groups and legal aid organizations, and persons who help African, Asian and Latin American refugees, was responsible for finding support for people in New Mexico facing deportation with the projected demise of the Deferred Action for Childhood Arrivals (DACA) program. Through contacts developed within the Council, the Office of Attorney General was able to identify and enlist the advocacy help of church and university leaders in multi-state litigation challenging the termination of the DACA program without proper notice to the nearly one million recipients of the deferred action status. In addition, the Council identified church and university leaders able and willing to incorporate equal rights protections for DACA recipients into their workplaces.
- ◆ CFASD advocates made themselves available throughout the state to groups of all ages and interests by providing several outreach events and forums during the course of 2017. The Advocates presented to elementary, middle and high school and college students on financial literacy, scams and dating safety as well as appearing at senior centers to warn vulnerable elderly consumers against divulging private financial information requested by scam artists. They presented information on the Attorney General's litigation to persons involved with voter rights and registration, participated with public interest groups to avoid consumer purchasing pitfalls and appeared on television and radio to inform the public of current popular tricks including scams.

TREATY OF GUADALUPE

HILDAGO DIVISION



The Treaty of Guadalupe Hidalgo Division was created by the New Mexico Legislature in 2003 to “review, oversee and address concerns relating to the provisions of the Treaty of Guadalupe Hidalgo that have not been implemented or observed in the spirit of Article 2, Section 5 of the constitution of New Mexico.” (NMSA 1978 §8-5-18). The Division was formally staffed as of the fall of 2016 through the end of fiscal year 2017. During that period of time, the Division actively reached out to individual land grants throughout the state and the New Mexico Land Grant Council in an effort to develop a work plan to address its statutory mission in support of New Mexico’s community land grants and Acequias who are recognized as a rich and critical part of our State history and remain a vital part of our present day culture.

The Treaty of Guadalupe Hidalgo Division provides legal representation to the New Mexico Land Grant Council and the New Mexico Acequia Association. The Division’s vision is to take a proactive approach to finding solutions and responding to the evolving needs of the Land Grant Community by providing legal support, policy development and outreach.

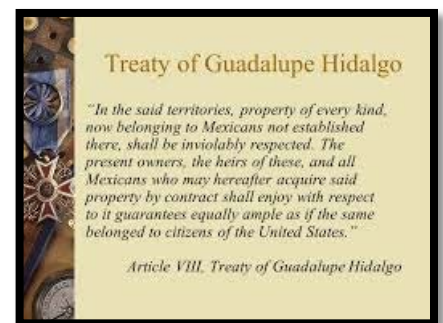
NEW FOR 2017

The Division:

- ◆ Met its goal to build legal and community capacity with the Land Grant Council (NMLCG) by leveraging partnerships, increasing our understanding of the needs of the various land grant communities and developed a knowledge base to begin formulating our legal goals;
- ◆ Performed outreach and attended a multitude of individual community land grant meetings throughout the State;
- ◆ Participated in strategic meetings with members of different community land grants, the NMLGC, state and federal agencies, and representatives of the New Mexico congressional delegation;
- ◆ Actively participated in meetings hosted by the U.S. Forest Service representing the interest of community land grants-Mercedes and acequias during the Carson and Santa Fe Forest Plan Revisions
- ◆ Provided Open Meetings Act and Inspection of Public Records Act training to members of community land grants; and
- ◆ Collaborated with New Mexico Highlands University Southwest Studies Program to educate students on land grants and acequia law. This outreach was extended to students throughout the state.



**Marlo Aragon, AAG
Open Government**



Treaty of Guadalupe Hidalgo cont'd

KEY OUTCOMES

To date, the Division has:

- ♦ met with over eleven (11) land grant communities such as the Cebolleta , Atrisco, Chilili, Santo Domingo de Cundiyo, Cañon de Carnue, Abiquiu, Tierra Amarilla , Tome, Santo Tomas Apostol Del Rio de Trampas, Santa Barbara and Mora;
- ♦ Provided legal research, analysis and review of the Land Grant Support fund contracts awarded by the Land Grant Council which provided direct financial assistance to community land grants;
- ♦ Attended monthly NM Land Grant Council meetings and local land grant meetings.
- ♦ Worked in collaboration with the council to review, analyze and develop state policies, plans and legislation;
- ♦ Reviewed, analyzed and tracked proposed legislation affecting Land Grants and Acequias during the legislative session;
- ♦ Co-sponsored and presented at the State Capitol for the Treat of Guadalupe Hidalgo Day; and
- ♦ Provided legal research, analysis and oversite of the election process relating to Land Grant Council and Board of trustees.



La Morada
Anton Chico Land



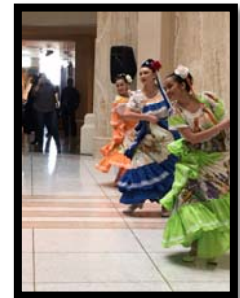
Anton Chico Land Grant



Old Truchas Mission
of Holy Rosary
Built-1764
Truchas, New Mexico



Treaty Day at the
State Capitol



Treaty Day at the
State Capitol



Las Trampas Official
Scenic Historical
Marker



Tome Land
Grant



San Jose de Garcia
Catholic Church



Treaty Day at the
State Capitol

Photos courtesy of Britney Martinez

CRIMINAL AFFAIRS

DIVISIONS AND UNITS

Under NMSA 1978 §8-5-2, the criminal jurisdiction of the Attorney General is to prosecute and defend all criminal related cases in the Supreme Court and Court of Appeals in which the State is a party. The Attorney General has authority to prosecute and defend any criminal action and proceedings when, in his judgment, the interest of the state requires such action or when requested by the Governor. The Attorney General also has statutory jurisdiction when any district attorney either refers and/or fails to prosecute any criminal matter and shares concurrent jurisdiction with district attorneys for some specific criminal offenses, including but not limited to, human trafficking and violations of the Governmental Conduct Act.

Criminal Affairs investigates and prosecutes matters ranging from public corruption to the most violent and heinous of crimes, to pursuing Medicaid Fraud and abuse and exploitation in New Mexico's care facilities, further upholding the Attorney General's top priority of protecting the children and families of New Mexico. The primary goal of Criminal Affairs is to aggressively and successfully secure criminal convictions, and to ensure that these convictions are upheld through the criminal appeals process.



Deputy Attorney General Sharon Pino oversees the four Divisions within Criminal Affairs: Special Prosecutions; Special Investigations; Criminal Appeals; and the Medicaid Fraud Control Division, as well as the Victim's Services Unit, which serves all Divisions within Criminal Affairs.

SPECIAL PROSECUTIONS

DIVISION



*Clara Moran, AAG
Special Prosecutions
Director*

The Special Prosecutions Division is responsible for prosecuting complex and specialized criminal cases throughout New Mexico. Many of the individual cases the Office of the Attorney General takes on for prosecution are large in scale and require a great number of resources and specialization. The Division specializes in handling cases related to internet crimes against children, child sexual exploitation, violent crimes, fraud, and political corruption. The Division also has a Traffic Safety Resource Prosecution Unit which provides training, education, and technical support to prosecutors and law enforcement agencies throughout the state and a Border Violence Unit which specializes in International extraditions, human trafficking, and money laundering prosecutions. The Division provides technical assistance and trial support to local prosecutors and law enforcement, and it also provides training for federal, state, and local agencies.

NEW FOR 2017

- ◆ In 2017, the Special Prosecutions Division of the Office of the Attorney General conducted 10 trials throughout the State of New Mexico, while maintaining a caseload of nearly 130 cases, approximately 30 of which were pending trial at a time. Cases tried during 2017 include charges of armed robbery, assault, bribery, child abuse, criminal sexual penetration of an inmate, sexual exploitation of children, tampering with evidence, homicide and charges related to political corruption.
- ◆ In addition to the matters tried in 2017, the Special Prosecutions Division also initiated, reviewed, and resolved cases involving human trafficking, sexual exploitation of children, domestic violence, child solicitation, child abuse, criminal sexual penetration, tax fraud, health care fraud, money laundering, embezzlement, and public corruption.
- ◆ In 2017, attorneys in the Special Prosecutions Division also conducted 43 sex offender parole board hearings, and maintained a caseload of 14 international extraditions while working in conjunction with local law enforcement, district attorney's offices, the U.S. Marshal Service and the U.S. Department of Justice to recover violent fugitives.
- ◆ Our Border Violence Liaison attended nine Border Violence Protocol Meetings. The liaison assists and collaborates with Law Enforcement Officials from the U.S. Marshal Service, FBI, U.S. Border Patrol, ICE, Homeland Security, and from Mexico PGR, Mexican Consulate, CISEN, Mexican Federal Police, Chihuahua State Police (Unica), C4, and Mexican Federal Immigration.
- ◆ The Traffic Safety Resource Prosecution Unit (TSRPU) trained 965 law enforcement officers and prosecutors throughout the State. The TSRPU also conducted one Courts-to-Schools Program with the assistance of Santa Fe Magistrate Judge George Anaya, Jr. for the Santa Fe Master's Program on May 12, 2017.

Special Prosecutions Division cont'd

Mark Webb

On January 31, 2017, Webb was sentenced to serve seven months in the Bernalillo County Detention Center and upon his release from custody will be placed on supervised probation after being convicted pursuant to a guilty verdict on December 12, 2016, on one count of Voyeurism, one count of Attempt to Commit a Felony to-wit: Voyeurism (Child Under 18), and one count of Battery on a Household Member. He also faces another trial dealing with multiple counts of sexual exploitation of children by manufacture.

Barion Solórzano

On February 10, 2017, Solórzano was sentenced to 30 years in the New Mexico Department of Corrections after being convicted pursuant to a guilty plea on three counts of criminal sexual contact of a minor, one count of sexual exploitation of children by production (child under 13), and one count of sexual exploitation of children (manufacture). Solórzano sexually abused a six-year-old child and photographed her during the sexual abuse.

Joseph Apodaca

On April 28, 2017, Apodaca was sentenced to 36 years in the New Mexico Department of Corrections after being convicted at trial in November 2016, on two counts of Criminal Sexual Penetration in the first degree, and one count of Tampering with Evidence for the extremely violent rape of a young woman he left for dead in Valencia County in 2014. The survivor will suffer medical issues for the rest of her life due to the brutal rape.

Lloyd Aguilar

On June 21, 2017, Lloyd Aguilar was sentenced to 20 years in the New Mexico Department of Corrections followed by eight years of supervised probation after being convicted at trial on March 17, 2017, on one count of Armed Robbery with a one year firearm enhancement (mandatory serious violent offense), one count of Conspiracy to Commit Armed Robbery, three counts of Child Abuse -

Intentional (No Death or Great Bodily Harm) with a one year firearm enhancement (designated as serious violent offense at sentencing), and one count of Tampering with Evidence for robbing a mother and her three children at gunpoint in a Smith's parking lot on the Westside of Albuquerque. This case was jointly prosecuted by the Office of the New Mexico Attorney General and Second Judicial District Attorney's Office.

Enock Arvizo

Former Metropolitan Detention Center (MDC) officer was indicted on several counts of criminal sexual penetration for raping female inmates while working as a correctional officer. Beginning in May 2017, the Special Prosecutions Division began the first of what would eventually be five trials against this defendant. The defendant was convicted of Criminal Sexual Penetration of an Inmate by a Person in a Position of Authority and two counts of Assault.

Jeffrey Morrill

On March 28, 2017, Morrill was sentenced to serve two years in the Bernalillo County Metropolitan Detention Center and four years of supervised probation with lifetime sex offender registration after being convicted at trial on two counts of Sexual Exploitation of Children by Distribution and one count of Sexual Exploitation of Children by Possession. Graphic, sexual images of young girls ranging in age from six to 10 were in Mr. Morrill's possession at the time of his arrest. The defendant was found guilty at trial on the above mentioned counts in December 2016.

Christopher Davis

On July 6, 2017, Davis was sentenced to serve eight years of a 24 year sentence in the New Mexico Department of Corrections and between five and 20 years of supervised probation and sex offender parole with lifetime sex offender registration after being convicted pursuant to a Guilty Plea on February 17, 2017, on nine counts of

Criminal Sexual Penetration of a Minor (Child 13-16) and one count of Sexual Exploitation of Children by Manufacturing and one count of Child Solicitation by Electronic Communication Device (Child 13-16).

David Rael

On November 1, 2017, Rael was sentenced to nine years in prison for three counts of Sexual Exploitation of Children (Manufacture), one count of Sexual Exploitation of Children (Distribution), and one count of Sexual Exploitation of Children (Possession). Rael was found guilty at trial on June 14, 2017 before the Honorable Mary Marlowe Sommer in the First Judicial District Court. Rael committed his crimes in 2013 in Los Alamos County.

Phil Griego

On November 16, 2017, former state senator Phil Griego was found guilty of one count of Violation of Ethical Principles of Public Service, one count of Violation of Ethical Principles of Public Service (Requesting or Receiving Thing of Value), one count of Bribery, Fraud (Over \$20,000), and one count of Unlawful Interest in a Public Contract (Over \$50). The case involves the 2014 sale of a state-owned building in downtown Santa Fe wherein Griego received a \$50,000.00 commission. Griego is facing up to 17 ½ years in prison. Griego's sentencing is scheduled for February 16, 2018. Griego was also indicted on another case in 2017 involving Campaign Finance Violations, among other offenses. That case is pending trial.

Xavier Nelson

Nelson was indicted for vehicular homicide by reckless driving after killing a 10-year-old girl while he is alleged to have been drag racing on Interstate 25 in Albuquerque. This matter was jointly prosecuted by the 2nd Judicial District Attorney's Office and the Office of the Attorney General on December 15, 2017 and Nelson was convicted at trial of a felony homicide by vehicle (reckless driving).

Special Prosecutions Division cont'd

KEY OUTCOMES

Courts to School Program is designed to bring the courtroom into schools, exposing students to the realities and consequences of drinking while under the influence of drugs and/or alcohol. School gymnasiums and performing arts centers are transformed into courtrooms complete with lawyers and defendants flanking the judge's bench, bailiffs and probation officers.

Prosecutors in the Special Prosecutions Division regularly conducted training for law enforcement and local prosecutors, including over 20 presentations on investigation and prosecution of internet crimes against children, human trafficking, criminal sexual penetration, public corruption, money laundering, driving while intoxicated and traffic offenses, domestic violence, and international extraditions.

SPD Highlights: Prosecutors in the Special Prosecutions Division assisted in a week-long training sponsored by the Conference of Western Attorneys General, where the Division trained prosecutors, forensic scientists, and law enforcement from Mexico.

These are just some examples of the remarkable work performed by the Special Prosecutions Division of the Office of the Attorney General. The staff continuously strives to do its absolute best to defend the rights and dignity of the citizens of New Mexico.



AAG Clara Moran in court representing the state and the AG's Office



AAG Clara Moran at former Secretary of State Diana Duran's trial



Legislative sponsors with AAG Clara Moran



AG Balderas with Deputy AG Sharon Pino, and AAG Clara Moran



AG Balderas with Deputy AG Sharon Pino and widow of fallen Police officer

SPECIAL INVESTIGATIONS

DIVISION



*Ben Baker,
Special Investigations
Director*

The Special Investigations Division works to provide a safe environment for New Mexico's most vulnerable populations, including children and the elderly. The Division is responsible for reviewing and investigating crimes that are referred to the Office of the Attorney General, often resulting in the arrest and incarceration of dangerous and corrupt criminal offenders. Additionally, the Division regularly supports efforts to secure restitution for victims of financial crimes and fraud.

The Division is comprised of separate units, each handling investigations in its own specialty area; these units include Special Investigations; Internet Crimes Against Children; Human Trafficking; and the Anti-Money Laundering Unit. The Special Investigations Division also oversees investigations conducted by agents assigned to the Medicaid Fraud Control Division.

NEW FOR 2017

- ◆ 2017 was an especially successful year for the Special Investigations Division (SID), which conducted several significant law enforcement investigations and operations. The first of these successes was the investigation and subsequent criminal conviction of a former State Senator, Phil A. Griego, for fraud and Governmental Conduct Act violations. The Division also conducted numerous search and arrest warrants, as well as outreach and education, all of which strengthened protections for vulnerable New Mexicans.
- ◆ Looking forward, the Special Investigations Division aims to continue to conduct comprehensive criminal investigations in a wide variety of specialty areas throughout the State of New Mexico. We will continue to leverage collaborative partnerships and resources to provide these services to victims in rural communities where they otherwise might not exist.

KEY OUTCOMES

2017 Special Investigations Accomplishments:
(Total for all four Units and Medicaid Fraud Investigations)

- ◆ 248 Case Referrals
- ◆ 677 Closed Cases
- ◆ 41 Law Enforcement Trainings
- ◆ 78 Law Enforcement Operations
- ◆ 197 Arrests
- ◆ 618 Search Warrants
- ◆ 1,315 Open Cases
- ◆ 1,084 Reviewed Cases

Special Investigations cont'd

SPECIAL INVESTIGATIONS UNIT

The Special Investigation Unit (SIU) conducts the widest breadth of criminal investigations within the office ranging from violent crimes to violations of the Governmental Conduct Act.

NEW FOR 2017

In August of 2017, Special Investigations Unit Agents conducted an investigation into an allegation surrounding the criminal sexual conduct of Eli Kronenanker, with a then 17-year-old victim. On August 31, 2017, (in Bernalillo County) Kronenanker was arrested for seven counts of criminal sexual penetration, kidnapping, intimidation of a witness and aggravated assault with a deadly weapon. On September 4, 2017, (in Sandoval County) Kronenanker was arrested for three counts of retaliation against a witness, intimidation of a witness and aggravated assault with a deadly weapon. Subsequent to his arrest by New Mexico Attorney General Special Agents, grand juries in both Bernalillo and Sandoval Counties indicted Kronenanker on the same charges. He is currently awaiting trial in these cases.

KEY OUTCOMES

- ◆ 26 Arrests
- ◆ 32 Search Warrants
- ◆ 530 Open Cases
- ◆ 220 Reviewed Cases
- ◆ 61 Case Referrals
- ◆ 311 Closed Cases



INTERNET CRIMES AGAINST CHILDREN UNIT (ICAC)

The ICAC unit investigates the production, distribution and possession of child pornography within the state of New Mexico. ICAC also leads the statewide effort and is the task force commander for all 87 state, local, federal, tribal and military affiliate law enforcement agencies.

NEW FOR 2017

- ◆ In June of 2017, ICAC agents acted in response to concerned community member's complaints and began an undercover chat via the internet with a subject identified as Otalee Brown (40). Brown believed that he was communicating with a 14-year-old acquaintance when he introduced the subject of sex with the girl into the conversation. Agents arranged a meeting with Brown and he was arrested when he arrived to meet in person the 14-year-old victim. Brown was charged with electronic solicitation of a child and is pending trial.
- ◆ During the months of April and May, 2017, the Office of the Attorney General, ICAC Task Force executed a multijurisdictional-enterprise operation called "Operation Broken Heart IV." This operation concentrated on offenders who: (1) possess, manufacture, and distribute child pornography; (2) engage in online enticement of children for sexual purposes; (3) engage in the commercial sexual exploitation of children (commonly referred to as child prostitution), and (4) engage in child sex tourism (traveling abroad for the purpose of sexually abusing foreign children). During this two-month-long national push to lock up predators, the Office of the Attorney General ICAC Task Force served 110 search warrants, arrested 37 alleged predators, identified 19 child victims, and rescued three more children from further abuse. The initiative also included reaching 8,138 persons on internet-safety education and outreach events in New Mexico.

Special Investigations cont'd

INTERNET CRIMES AGAINST CHILDREN UNIT (ICAC) cont'd

KEY OUTCOMES

During 2017, the ICAC Unit achieved the following statistical outputs:

- ◆ 118 Arrests
- ◆ 489 Search Warrants
- ◆ 680 Open Cases
- ◆ 680 Reviewed Cases
- ◆ 172 Case Referrals
- ◆ 273 Closed Cases
- ◆ 909 Outreach Presentations
- ◆ 11 Law Enforcement Operations
- ◆ 41 Child Victims Identified
- ◆ 589 Cyber Tips Received
- ◆ 1,693 Forensic Exams Completed
- ◆ 32,275 Law Enforcement Personnel Trained
- ◆ 282 other professionals trained



HUMAN TRAFFICKING UNIT (HTU)

The Human Trafficking Unit focuses on the investigation of sex and labor trafficking within New Mexico. This unit also leads as the statewide task force commander for the 48 state, local, federal and tribal affiliate law enforcement and regulatory agencies. The increase of outreach, awareness and education about human trafficking are important unit objectives met by training via a multidisciplinary approach.

NEW FOR 2017

- ◆ In July 2017, the Office of the Attorney General led a multijurisdictional task force which conducted an undercover operation targeting solicitation of sex with underage victims. Seven males were arrested as a result of this week long operation, charged with the crime of attempted human trafficking (sex trafficking). All seven suspects are awaiting trial on these charges.
- ◆ In December 2017, the New Mexico Office of the Attorney General entered into an Memorandum of Understanding (MOU) with the U.S. Department of Labor, for the purpose of combatting labor trafficking within the State of New Mexico. This MOU represents the first of its kind with the U.S. Department of Labor.

KEY OUTCOMES

- | | | |
|---------------------------------|------------------------|--|
| ◆ 45 Arrests | ◆ 31 Reviewed Cases | ◆ 5 Reviewed Cases |
| ◆ 36 Search Warrants | ◆ 15 Case Referrals | ◆ 3 Closed Cases |
| ◆ 24 Law Enforcement Operations | ◆ 71 Closed Cases | ◆ 72 Victims Interviewed |
| ◆ 105 Sex Trafficking Cases | ◆ 10 Labor Trafficking | ◆ 34 Law Enforcement/NGO Presentations |
| ◆ 48 Open Cases | ◆ 7 Open Cases | |

Special Investigations cont'd

ANTI-MONEY LAUNDERING UNIT (AMLU)

The AMLU investigates complex financial crime cases. The Unit is staffed by subject matter experts who regularly fill gaps in specialty law enforcement resources, particularly in rural New Mexico.

NEW FOR 2017

- ◆ In 2017, Agents within the Anti-Money Laundering Unit investigated the criminal financial activity of Edward Boysel. Boysel was alleged to have been conducting fraudulent business practices related to a concealed carry weapons business he owned and operated throughout the state (five total locations in: Bernalillo, Valencia, McKinley, Torrance counties). In October 2017, agents completed their investigation and Boysel was subsequently arrested and indicted by a Bernalillo County grand jury on charges of – Money Laundering; Tax and Medicaid Fraud; Falsification of Public Records; and Abandonment of a Dependent. He is currently awaiting trial on these charges.

KEY OUTCOMES

- ◆ 8 Arrests
- ◆ 61 Search warrants
- ◆ 57 Open Cases
- ◆ 57 Reviewed Cases
- ◆ 19 Closed Cases
- ◆ 7 Law Enforcement Trainings
- ◆ 43 Law Enforcement Operations



Special Investigations Division Team

CRIMINAL APPEALS

DIVISION



*Anne Kelly, AAG
Criminal Appeals
Director*

The Criminal Appeals Division of the Office of the Attorney General represents the State of New Mexico in all cases filed in the New Mexico appellate courts, as well as representing the wardens of various prisons throughout New Mexico in habeas corpus litigation filed by inmates. In addition, the Division represents the wardens in federal habeas corpus litigation. The Division also reviews DNA expungement requests filed by defendants and handles other post-conviction litigation on behalf of the State including requests for DNA testing.

The attorneys in the Criminal Appeals Division routinely consult with and advise various assistant district attorneys around the State. The Division conducts trainings on appellate law and new developments in appellate cases for the District Attorneys' Association and other groups as requested. In 2017, the Division conducted trainings for probation and parole officers, victim advocates, the District Attorneys' Association, and law enforcement.

NEW FOR 2017

- ◆ In mid-2017, the Supreme Court issued new rules to implement the state constitutional amendment that allows pretrial detention of suspects without bond. The Division has been active in litigating the application and contours of the new rules regarding pretrial detention and in defending district court orders to detain suspects without bond. The Division is also represented on the Supreme Court Committee that formulated the rules and that is currently considering amendments to those rules.
- ◆ The Division is litigating two cases on appeal that have highlighted a gap in the juvenile justice system. In both cases, the juvenile was convicted of crimes of extreme violence, but was nevertheless found to be amenable to treatment and therefore could be held under the auspices of the criminal justice system only until the age of 21. Under the current system, a juvenile can be found to be amenable to treatment by one judge at one point in time with no further opportunity for judicial review. This can result in the juvenile being released into the community at 21 years old even if the juvenile has not been fully treated or rehabilitated. The Division is currently seeking to at least have appellate review of these decisions, which can have profound consequences for the safety of the public, as well as the juvenile.
- ◆ The Division also updated a search and seizure manual for the use of lawyers and law enforcement. This manual contains a comprehensive summary of issues relating to search and seizure and the most recent and relevant case law relating to those issues.

Criminal Appeals Division Cont'd

State v. Benjamin David Baroz III

New Mexico Supreme Court

The New Mexico Supreme Court vacated the defendant's felony murder conviction because the predicate felony for the felony murder was shooting at or from a motor vehicle. In *State v. Marquez, 2016-NMSC-025*, the Court held that shooting at or from a motor vehicle is an elevated form of aggravated battery and therefore cannot be a predicate felony for felony murder. However, the Court held Baroz was guilty of second degree murder, even though not charged with that crime, because second degree murder is a lesser included offense of felony murder and there was sufficient evidence for that crime. The Court further held that the district court correctly denied the defendant's self-defense instruction. Finally, the Court upheld the one year firearm enhancement sentence against the claim of double jeopardy. The Court held that legislative intent clearly allows for the enhancement, even if the elements instruction also requires the jury to find a gun was used.

State v. Trevor Begay, ***New Mexico Supreme Court***

The New Mexico Supreme Court addressed the meaning of Section 31-20-8 and held that a magistrate court probationer's probation is tolled while the probationer is under a bench warrant. The tolling Section 31-21-15(C), was changed by the Legislature in March of 2016 to include lower court probationers, but the Supreme Court held the issue was still of substantial public interest because it affected a number of cases. The Court agreed with the Office of the Attorney General's argument that allowing a probationer to evade probation and still successfully complete it would be an absurd result.

State v. Carlos Carrillo, ***New Mexico Supreme Court***

The New Mexico Supreme Court upheld the defendant's two first-degree murder convictions. Much of the evidence against the defendant was garnered from his cell phone, which both placed him in the area of the murders and showed 75 phone calls between him and one of the victims. The Court held that testimony regarding the call detail report and the cell tower report was testimony regarding the contents and meaning of business records and thus admissible as an exception to the hearsay rule. However, the Court held that further testimony that explains how the cell towers work and how calls can be located would require expert testimony.

State v. Juan Rivas, ***New Mexico Supreme Court***

The New Mexico Supreme Court upheld the juvenile defendant's conviction for the stabbing death of an 83-year-old woman. The defendant gave an initial confession to police, after being advised of his rights, and confessed to the crime and said he acted alone. After he was charged, a guardian ad litem was appointed for him, and he gave a second statement giving a different account of the crime saying that others had been involved in the crime. The Court agreed with the Office of the Attorney General that the defendant's statements were properly admitted and that his attorney at trial was constitutionally effective.

State v. Brian Adamo, ***New Mexico Court of Appeals***

The Court affirmed the defendant's conviction for possession of child pornography. The evidence showed there were more than 900 downloads of child pornography to the IP address on defendant's computer, that defendant had images of CP on a shared folder on a file sharing network, and an expert was able to

find at least 52 files that had been deleted. The Court held the instructions sufficiently informed the jury of the required mens rea for the crime and rejected the defendant's argument that his deletion of the images meant he could not have possessed them.

State v. Victor Gonzales, ***New Mexico Court of Appeals***

The defendant was convicted of criminal sexual contact in metropolitan court and appealed to the district court which affirmed on an on-record review. The Court agreed with the Office of The Attorney General that criminal sexual contact is a crime that, under the applicable statutes, entitles the defendant to only an on-record appeal to the district court. The victim was not related to the defendant in any way, but the Court found that the same principles regarding domestic violence applied.

State v. Benjamin Seigling and ***State v. Armando Navarro-*** ***Calzadillas,***

New Mexico Court of Appeals

The New Mexico court of Appeals considered the intent and meaning of the new case management rule in the Second Judicial District. The Court reversed the district court's orders of exclusion of witnesses and held that Supreme Court authority still binds NM courts to consider lesser sanctions when a party fails to abide by a court order. The Court specifically found that the local rule is not "designed to serve as a technical mechanism by which important witnesses in criminal cases are excluded, core evidence suppressed as a matter of first resort, or cases themselves dismissed with prejudice." However, both cases have been remanded back to the Court of Appeals for a second time to consider the holdings in light of *State v. Ashley LeMier*, in which the Supreme Court upheld a discovery sanction.

Criminal Appeals Division Cont'd

KEY OUTCOMES

State v. Marc Tapia, New Mexico Court of Appeals

In an unpublished opinion, the Court of Appeals affirmed the defendant's convictions for trafficking by prostitution. This case was investigated and prosecuted at the trial court level by the Office of the Attorney General, as part of an office-wide effort to bring human traffickers to justice. The Court of Appeals rejected the defendant's claim of a speedy trial violation and other trial errors in affirming the defendant's conviction and sentence.

State v. Juan Torres Santos, New Mexico Court of Appeals

Defendant, a pediatrician, was convicted of one count of sexual exploitation of children by possession. He claimed there was insufficient evidence that he intentionally possessed child pornography because he deleted the files after watching them. The Court held the defendant possessed the files by downloading, viewing, and deleting the videos on his computer. The Court also held that it was not error for the State to be allowed to show the videos, despite the defendant's offer to stipulate that they constituted child pornography.

The videos were probative of defendant's intent and to refute his claim that he viewed them only for medical research. This case was jointly investigated and prosecuted at the trial court level by the Office of the Attorney General.

Habeas Corpus and Post-conviction Litigation:

Curtis Bloomfield v. Manuel Pacheco, Warden Second Judicial District Court

Bloomfield pleaded guilty to five counts of first-degree murder and was sentenced to five consecutive life sentences. He filed a habeas corpus petition, claiming that the plea agreement was impacted by prosecutorial misconduct, that he had been promised out-of-state incarceration, and that his attorney was ineffective. The Office of the Attorney General argued that his petition had no merit and that his attorney gave him effective assistance throughout the plea process. The district court agreed and dismissed his petition without a hearing. The New Mexico Supreme Court denied his petition for writ of certiorari in 2017.

Joel Ira v. Paul Janecka, New Mexico Supreme Court

Ira was convicted in 2002 of multiple brutal acts of rape against his young stepsister. He was sentenced as an adult to consecutive sentences totaling 91 ½ years. In 2015, he pursued a petition for writ of habeas corpus which was denied by the district court. The Office of the Attorney General is currently litigating the issue on certiorari review in the New Mexico Supreme Court arguing that his sentence is not unconstitutional under new United States Supreme Court authority.

State v. New Mexico v. Jacob Duran, Second Judicial District Court

The Office of the Attorney General is defending a 30-year old murder conviction against petitioner's argument under a 2003 statute that allows for post-conviction DNA testing. The district court granted the petitioner's request for DNA testing on four items of surviving evidence. The results of that testing are not sufficiently exculpatory to warrant relief under the statute. The case is pending in the district court.

2017 Criminal Appeals Accomplishments:

- ◆ Filed 236 briefs in the New Mexico Court of Appeals and Supreme Court.
- ◆ Filed 48 memoranda in opposition to the Court of Appeals' summary calendar .
- ◆ Conducted 18 oral arguments in the New Mexico Court of Appeals and Supreme Court.
- ◆ Filed 85 petitions for writ of certiorari or responses thereto, and responses to other petitions for extraordinary relief in the New Mexico Supreme Court.
- ◆ Reviewed 12 DNA expungement requests from defendants.
- ◆ Filed 20 responses to appeals regarding pretrial release or denial thereof in the New Mexico Court of Appeals and Supreme Court.
- ◆ Filed 8 other substantive motions in the appellate courts.
- ◆ Conducted 57 hearings in state district court related to habeas corpus litigation and other claims for post-conviction relief.
- ◆ Filed 57 responses or briefs in state district court.
- ◆ Filed 20 answers in federal district court related to federal habeas corpus litigation

MEDICAID FRAUD CONTROL

DIVISION



*Patricia Padrino, AAG
Medicaid Fraud Control
Division Director*

The Medicaid Fraud Control Division (MFCD) at the Office of the Attorney General implemented a proactive fraud detection approach and obtained a Data Mining Waiver from the federal government, which now allows the Division to directly review Medicaid claims and proactively identify and thwart Medicaid Fraud. The Division's mission is to maintain the integrity and solvency of the Medicaid Program and protect the most vulnerable members of our community from physical or financial harm in New Mexico care facilities.

The Division is uniquely able to investigate these complex cases due to its interdisciplinary personnel structure, which includes attorneys, financial investigators, medical investigators, special agents, IT professionals and legal staff. Unlike some of the other criminal Divisions within Criminal Affairs, the MFCD is able to pursue both criminal and civil actions to fulfill its mission.

NEW FOR 2017

- ◆ ***Proactive Fraud Detection and Collaboration:*** In July of 2017, Attorney General Balderas hosted stakeholders, including top CEOs from Managed Care Organizations, Cabinet Secretaries and leaders from Executive Agencies and other partners to begin a collaborative dialogue on working together to combat Medicaid Fraud and ensure that these valuable funds were going to the vulnerable populations who rely on them. The Division also launched a public awareness campaign aimed at educating the public to identify signs of Medicaid Fraud and abuse and exploitation in New Mexico care facilities. The campaign includes Public Service Announcement's running throughout New Mexico and handouts to be used at community awareness events.
- ◆ ***Data Mining Waiver:*** On May 11, 2017, as provided under Federal regulations at 45 CFR §1007.20 (a), the Department of Health and Human Services Office of the Inspector General approved the Medicaid Fraud Control Division's application to conduct data mining. The approval signifies a significant expansion of the Division's authority to conduct proactive investigations in a manner that was previously prohibited.
- ◆ ***Intra-Agency Coordination:*** Two large scale law enforcement operations were conducted in 2017. The Division demonstrated an ability to partner with local and federal partners and other state agencies to ensure successful operations at multiple locations throughout the state resulting in the seizure of valuable evidence currently being utilized to further investigations intended to protect Medicaid for those vulnerable populations who rely on those resources.

Medicaid Fraud Control cont'd

MFCD's 2017 Notable Criminal and Civil Cases

Kathryn Bogin

Kathryn Bogin moved to Silver City to take care of her dying father. Her father received Medicaid money through Mi Via to provide for personal care services. Kathryn Bogin was her father's Power of Attorney and as the Employer of Record orchestrated a team of at least 5 caregivers in August of 2011. Her father died on September 29, 2011; however, Defendant continued to sign and submit 11 timesheets on behalf of the 5 caregivers after his death. The total amount of Medicaid money paid out after his death is \$7,049.60 based on submission of 11 falsified timesheets. A Plea and Disposition agreement was filed on March 20, 2017, in Silver City for one count of Medicaid Fraud, NMSA 1978 §30-44-7(A)(3), a fourth degree felony offense.

Bertha Martell

Bertha Martell was a personal care provider employed by Med-Care Personal Assistance in Las Cruces. Martell was hired to provide care to an individual who was incarcerated on three separate occasions from April 2013, through August 2015. During this period of incarceration, Martell is alleged to have submitted 17 falsified timesheets. A Grand Jury Indictment was filed on February 9, 2017, for one count of Medicaid Fraud, NMSA 1978 §30-44-7(A)(3), a fourth degree felony offense, and 17 counts of Falsification of Documents, NMSA 1978 §30-44-4(A)(2), a fourth degree felony offense. A Plea and Disposition agreement was filed on November 28, 2017, in Las Cruces, for one count of Medicaid Fraud and nine counts of Falsification of Documents.

Eileen Avina

Eileen Avina was a home health care provider. Avina stopped providing care to her client on October 7, 2014, after telling the client that she

wanted to take time off, yet Avina is alleged to have continued to submit timesheets purporting to render home health care to the client. A Grand Jury Indictment was filed on April 13, 2017, for one count of Medicaid Fraud, NMSA 1978 §30-44-7(A)(3), a fourth degree felony offense, and 12 counts of Falsification of Documents, NMSA 1978 §30-44-4(A)(2), a fourth degree felony offense. This matter is pending trial.

Mary Helen Hernandez

Mary Helen Hernandez submitted timesheets claiming she had provided personal care services to her relative when the relative had been admitted as an inpatient at the hospital. A Plea and Disposition agreement was filed on April 24, 2017 in Carlsbad for one count of Medicaid Fraud, NMSA 1978 §30-44-7(A)(3), a fourth degree felony offense.

JL Jones

JL Jones was a personal care provider employed by K-Bee Homecare Services in Clovis. JL Jones was hired to provide services for a Medicaid consumer who ultimately became incarcerated. While the consumer was incarcerated, JL Jones still submitted timesheets for payment indicating that personal care services had been provided. On August 25, 2017, the Curry County Grand Jury indicted JL Jones on 1 count of Medicaid Fraud, NMSA 1978 §30-44-7(A)(3), a fourth degree felony offense, and five counts of Falsification of Documents, NMSA 1978 §30-44-4(A)(2), fourth degree felony offenses. It is anticipated that JL Jones will plead guilty to one count of Medicaid Fraud and one count of Falsification of Documents on January 3, 2018.

Aamann Personal Care Services/ Dennis Minidis

Dennis Minidis owned and operated Aamann Personal Care Services, a PCO services provider. Minidis overbilled Medicaid for multiple consumers, including consumers who had transferred to different agencies, for a consumer residing in a rehabilitation facility, and for a consumer who was already deceased. A civil complaint was filed on August 24, 2017. Defendants failed to respond, and the District Court in Albuquerque entered a default judgment in the amount of \$53,692.66.

Qui Tam Cases

In 2017 The Medicaid Fraud Control Division obtained settlements in several Qui Tam cases that were resolved successfully. These recovered funds were returned to the federal Medicaid Program to continue to support the vulnerable populations that rely on the Medicaid Program and portions of these settlements constituting the state match were returned to the State General Fund.

El Paraiso

PCO services provider, El Paraiso Management Services and owner Grace Aragon were accused of submitting billing for the services of a caregiver that no longer worked for El Paraiso. When El Paraiso was reimbursed for these services, they did not pay the caregiver, but instead retained the payment themselves. El Paraiso and Grace Aragon entered into a settlement agreement with the MFCD in the amount of \$7,441.38 to resolve the dispute, and for an additional \$3,000.00 for the investigative costs of MFCD.

Medicaid Fraud Control cont'd

MFCD's 2017 Notable Criminal Indictments

Rick Romero

This referral was received from the New Mexico Human Services Department, which in turn received this referral from Options Home Care. The referral alleged that Rick Romero was billing the Medicaid program for care provided to Romero's relative for times that Romero was actually working as a Taos County Sheriff's Deputy. The Division completed its investigation and a Grand Jury Indictment was filed on April 6, 2017 in Taos for one count of Medicaid Fraud, NMSA 1978 §30-44-7(A)(3), a fourth degree felony offense, 10 counts of Falsification of Documents, NMSA 1978 §30-44-4(A)(2), a fourth degree felony offense, and 10 counts of Perjury, NMSA 1978 §30-25-1, a fourth degree felony offense. This matter is pending trial.

Elizabeth Martinez

Elizabeth Martinez was a personal care provider employed by Amber care in Las Cruces. During her time of employment, she is alleged to have submitted six different timesheets for services that were never provided. She also clocked in and out indicating that she was at her client's residence, despite GPS data showing that she was not actually at his home. On September 7, 2017, she was indicted by the Dona Ana County Grand Jury on two counts of Medicaid Fraud, NMSA 1978 §30-44-7(A)(3), fourth degree felony offenses, 6 counts of Falsification of Documents, NMSA 1978 §30-44-4(A)(2), fourth degree felony offenses, and 1 count of Computer Access with Intent to Defraud or Embezzle, NMSA 1978 §30-45-3(A), a petty misdemeanor offense. This matter is pending trial.



Maurena Spurlin

Maurena Spurlin was employed as a personal care provider to consumer Daniel Spurlin through Adaptive Care Personal Services in Los Lunas. During the hiring process, Maurena portrayed herself to Adaptive as Maurena Stull due to regulations that prohibit a spouse from providing personal care services to a consumer. During her period of employment she submitted 40 timesheets under the name Maurena Stull, despite the fact that she was married to the consumer and portrayed herself elsewhere as Maurena Spurlin. On October 5, 2017, Maurena Spurlin was indicted by the Valencia County Grand Jury on one count of Medicaid Fraud, NMSA 1978 §30-44-7(A)(3), a fourth degree felony offense, and 2 counts of Falsification of Documents, NMSA §30-44-4(A)(2), fourth degree felony offenses. This matter is pending trial.



Medicaid Fraud Control Division's 2017 Stats

222 Total Open Cases

- ◆ 62 Criminal
- ◆ 22 Civil Non-Qui Tam
- ◆ 138 Civil Qui Tam

456 New Referrals received

- ◆ 44 Criminal
- ◆ 8 Civil Non-Qui Tam
- ◆ 8 Civil Qui Tam
- ◆ 6 Indictments
- ◆ 3 Convictions
- ◆ 60 Cases Opened

14 Civil Actions (Settlements/ Judgments)

- ◆ 5 Civil Non-Qui Tam
- ◆ 9 Civil Qui Tam
- ◆ 24 Total Closed Cases
- ◆ 13 Criminal
- ◆ 7 Civil Non-Qui Tam
- ◆ 4 Civil Qui Tam

Total Medicaid Recovery \$4,560,582.80

Criminal: \$8,738.97
Civil Non-Qui Tam: \$617,677.35
Civil Qui Tam: \$3,934,166.56

17 Search Warrants

44 Regulatory Document Demands

**140 Case Referrals
(to outside agencies, such as
Department of Health and Adult
Protective Services)**

3 Trainings Conducted

7 Outreach Presentations

Medicaid Fraud Control cont'd

MFCD's Notable Civil Litigation Pending Trial

Nursing Home Litigation

In *State v. Preferred Care, et al.*, the Attorney General is pursuing a fraud case against a chain of nursing homes and their owners and operators from 2007-2012, for billing for care that was not, and could not have been provided. The case arose from numerous complaints from facility employees, residents, and their family members to the Attorney General. Interviews with witnesses and a review of documents presented by the Defendants to the government for payment, all confirm chronic understaffing of the Defendant Nursing Facilities and their failure to provide the Basic Care services that they were paid to provide, including toileting assistance, incontinence care, transferring to and from wheelchair and bed, dressing and personal hygiene, bathing, turning and repositioning, feeding assistance, and range of motion exercises.

Cathedral Rock Corporation sold its New Mexico nursing facilities in 2012 to Texas-based Preferred Care, Inc., following Cathedral Rock's plea bargain and civil settlement of False Claims Act litigation involving its Missouri nursing facilities. The New Mexico facilities have generated hundreds of millions of dollars in revenue since Preferred Care took over, nearly 80% of it paid by Medicare and Medicaid. Many of the services billed and paid for were not provided or were fundamentally worthless.

The nursing facilities completed, certified, and submitted a Minimum Data Set (MDS) for each resident. In the MDS, the Defendant Nursing Facilities assessed the needs and basic care required by each resident, and additionally certified that the level of care required was provided. Using the certified MDS data and nursing homes' own staffing data, the State was able to calculate the number of hours needed to provide the care the residents needed. The results showed it was mathematically and physically impossible for Defendant Nursing Facilities to provide the care they claimed to provide.

Dozens of witnesses have come forward with specific accounts of the impact of short staffing on residents, including residents being left in their own waste for long periods, residents not receiving adequate baths or assistance with personal hygiene, residents falling when they attempted to go to the bathroom on their own because no help was available, and residents not being able to get sufficient foods or liquids because no one was available to help them.

The State seeks to recover damages and civil penalties under the New Mexico Fraud Against Taxpayers Act (FATA), NMSA 1978 §§ 44-9-1 to 44-9-14, New Mexico Medicaid Fraud Act, NMSA 1978 §§ 30-44-1 to 30-44-8, New Mexico Unfair Practices Act (UPA), NMSA 1978 §§ 57-12-1 to 57-12-26, for breach of contract, unjust enrichment, and punitive damages.

In July of 2017, several entities associated with the Cathedral Rock Corporation filed for bankruptcy. These entities are named Defendants in the State of New Mexico's case. Notably however, owner C. Kent Harrington – a named defendant in the State case – has not filed for bankruptcy. This bankruptcy filing created a temporary stay in the State of New Mexico's case, while the Court considers the parties' briefing regarding which Defendants should be included in the stay.

On November 14, 2017, several entities associated with Preferred Care, Inc., who are also Defendants in the State's case, filed for bankruptcy. However, the owner of the corporation, Thomas Scott, has not filed for bankruptcy.

The MFCD is working to represent the state's best interest in the bankruptcy proceedings, and is continuing to pursue a lift in the bankruptcy stay associated with both sets of Defendants. The Division intends to pursue every available remedy to protect the interests of the vulnerable nursing home residents and the citizens of New Mexico.

VICTIM SERVICES UNIT



*Kathleen Carmona,
Victim Services Unit
Manager*

The Victim Services Unit (VSU) serves all of the Criminal Affairs Divisions and is staffed by two fulltime victim advocates that are committed to offering resources and support to victims of crime and their families. The VSU works diligently to assist victims of crimes as they navigate the criminal legal process. The Office of the Attorney General recognizes the importance of victims' rights and is committed to working proactively to ensure that those rights are upheld throughout the criminal legal process. The goal of the Unit is to provide comprehensive services in a competent, sensitive, and professional manner. The Office of the Attorney General also recognizes the value of preventing victimization and decreasing criminal behaviors through a holistic approach that includes education, outreach, harm reduction, and access to services. The VSU also responds to mass casualty incidents throughout the state to assist local law enforcement and victim service providers in crisis situations. The VSU relies on a network of service providers across the state to whom victims may be referred for services that fall outside the scope of what the Office of the Attorney General can provide.

NEW FOR 2017

- ◆ Throughout 2017 the VSU provided assistance and notification to victims/survivors of violent crime, including information regarding medical and crisis intervention services and other case information. Furthermore, the VSU provided notification and assistance to victims and their families during the often lengthy appellate process, including notification of appeal status and accompaniments to scheduled arguments and proceedings.
- ◆ In addition to providing assistance to victims of violent crime and providing information about the appellate process, VSU is also a part of five monthly multi-disciplinary teams (MDT) and three quarterly MDTs. These MDTs span from Taos County to Dona Ana County. With additional resources and funding, we would like to expand our efforts into McKinley, San Juan, and Chaves counties.

KEY OUTCOMES

- ◆ Received 454 intake calls from victims and/or constituents who were seeking information, referrals, or services.
- ◆ Mailed 216 notifications to victims related to cases in the NM Court of Appeals.
- ◆ Attended 5 adult sex offender parole board hearings on behalf of victims and/or their families .
- ◆ Assisted 89 victims or victims' family members in cases being prosecuted by the New Mexico Office of the Attorney General.
- ◆ Attended 7 oral arguments on behalf of victims and/or families.
- ◆ Conducted 3 presentations titled, "Victim Services" What we do, and how we can work together. One training titled, "Crime scene safety, making death notifications, and dealing with the media while on scene with multi-disciplinary teams", which consists of law enforcement and victim service providers.
- ◆ Responded to 3 mass casualty situations throughout the state.



The New Mexico Office of the Attorney General



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Editor's Note: *I hope you will find our 2017 Accomplishments informative and useful. As you read this document and note the accomplishments and services enumerated herein, the delivery of which are carried out daily by team members whose skills and commitment make NMAG the great agency it is today. I am privileged and honored to be one of the many team members contributing to our success. If you have any questions or comments regarding this document, please contact:*

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