
**CITY ATTORNEY’S OFFICE
ANNUAL REPORT
July 1, 2022 – June 7, 2023**

As City Attorney, I supported the Council/City and met my goals in the following manner:

- ✓ Provided timely and effective legal advice and legal review to the City including the City Council, Charter Officers, City Management and other City representatives and employees (over 2,700 employees).
- ✓ Successfully defended **in-house** the vast majority of cases and claims filed against the City.
- ✓ Focused Safety & Risk Management on **safety** and **loss prevention measures**.
- ✓ Protected Scottsdale citizens through fair and just criminal prosecutions with a respectful and community-minded focus.
- ✓ Achieved approximately \$600,000 in budget savings thus far this fiscal year through judicious use of the City’s resources.
- ✓ Supported and led an excellent City Attorney’s Office team in order to accomplish these tasks.

I have also met, and hopefully exceeded, expectations as further highlighted below:

2022/2023 Fast Facts:

Civil: With only 9.5 current civil lawyers reporting to me (and 7.5 staff), the Civil Department accomplished the following:

- **76** Total litigation cases defended/prosecuted (includes 22 condemnation cases; only 1 new case sent to outside counsel)
- **43** Resolved litigation cases (19 dismissed on pre-trial motions at no cost to City, 14 negotiated settlements (**see Exhibit 1 attached**), 10 resolved condemnation cases)
- **9** Mediations
- **40** Court Hearings
- **41** Ordinances drafted
- **330** Resolutions drafted
- **100+** Publicly noticed meetings attended, often after regular business hours
- **350+** Contracts reviewed
- **16,922** Public Records Requests monitored
- **332** Complex Public Records Requests handled solely by City Attorney’s Office

Prosecution: With only 9 current Prosecutors reporting up through my chain of command (and 13 staff), the Prosecution Department accomplished the following:

- **12,075** Charges prosecuted (includes long form charges and more straight-forward charges from arrests)
- **5,249** Cases prosecuted (includes 919 DUI cases and 741 Domestic Violence cases)
- **944** SPD and other requests for long form complaints received and analyzed for charging decisions (includes 427 complaints filed, 468 turndowns, and 49 pending)
- **110** Trials (most cases resolve without a trial)
- **64** Individuals who successfully completed the Diversion Program

Victim Services: With only 5 current Victim Advocates reporting up through my chain of command, the Victim Services Department accomplished the following:

- **26,268** Victim Services notifications and victim advocacy actions performed
- **3,298** Victims assisted during prosecutions

Safety & Risk Management: With only 11 current Safety & Risk Management employees reporting to me, the Department accomplished the following:

- **727** Formal claims investigated which includes the following:
 - 215 Notices of Claims demanding a total of \$38,402,645.59
 - 204 Worker's Compensation injury claims
 - 308 Internal auto and property damage claims
- **173** of the number above were off-site Field Investigations
- **\$1,173,605** Subrogation recoveries secured

CIVIL DEPARTMENT HIGHLIGHTS:

- Drafted Ordinance No. 4566 updating the Vacation and Short-Term Rental Ordinance to allow for the City licensing of Vacation and Short-Term Rentals and implementing additional powers granted to cities over Vacation and Short-Term Rentals.
- Senior Assistant City Attorney Bill Hylan served as interim Human Resources Director for approximately six months. This work included leading the recruitment effort that hired the new HR Director and helping with the orientation of the new Human Resources Director.
- Developed and represented the City's interests in the National Prescription Opioid MDL (multi-district litigation). The City has received more than \$650,000 this fiscal year from the initial (two) settlements, and it joined in five additional settlements which we expect to bring in more than \$10 million in settlement payments over the next 6-18 years. Advised the City Manager and Treasurer's Office about these funds and the restrictions associated with them.

- Worked with City staff to solicit bidders and memorialize the land sale at 94th Street and Bell Road for \$42.7 million. Our office ensured that the tax-exempt bond covenants for the land were maintained and provided legal advice on the projects to which the land sale proceeds were allocated, permitting City projects to be funded without issuing additional bonds.
- Drafted IGA No. 2023-055-COS with Maricopa County accepting \$682,207 in funds for providing heat relief services for individuals experiencing homelessness.
- Significantly involved in the City's legislative efforts, including advising staff on legislation related to the Rio Verde Foothills water issue. Prepared the proposed IGA to the County.
- Drafted Development Agreement 2022-137-COS between City and Aspirant Development LLC for the development of a residential healthcare facility with 115 memory care units and 132 independent living units at 3380 N. Scottsdale Rd.
- Drafted Development Agreement 2022-164-COS between City and High Street Arizona Inc. for the development of a mixed use multifamily residential community of up to 215 units at 10050 N. Scottsdale Road with a minimum of 10% of the units set aside as workforce housing.
- Provided legal advice and assisted City staff with formation of two Street Light Improvement Districts in Palo Viento I Subdivision in response to citizen petitions, which has not been done in over 20 years. This includes a charge for the use of lighting facilities.
- Provided legal advice and assisted with the issuance of two series of general obligation bonds.
- Provided advice and legal documentation for City amendments and updates to 11 different Building and Fire Codes.
- Renegotiated and drafted the SUSD ballfield maintenance IGA allowing the City to use 10 SUSD Fields for its sports programming.
- Drafted nearly 50 license and use agreements for Stadium events.
- Drafted Council-approved documents to form Protect and Preserve Scottsdale Task Force and prepared bylaws and provided legal advice to new Task Force. **The City Attorney is attending and providing legal advice to this Task Force.**
- Provided legal advice and review regarding the acceptance of the updated 2022 Integrated Water Resources Master Plan.
- Provided legal advice and drafted an agreement regarding construction of monument known as the "Scottsdale Memorial for the Fallen" located within the Scottsdale Civic Center Mall.
- Provided legal advice and drafted an agreement authorizing HomeServe USA Corp. to market and offer its service line warranty protection program to City of Scottsdale water and sewer utility customers, in exchange for an upfront payment of \$200,000 and ten percent of collected premiums for the sale of policies within the City.
- Provided legal advice and drafted Ordinance amending the Scottsdale Revised Code to add a new Section 49-260 to prohibit mandatory overseeding of turf or other mandatory turf requirements by property owners' associations.

- Drafted and assisted with multiple contracts for Happy Valley Road/Pima Road intersection project including two joint trench agreements for utility relocations and an agreement for a WCF replacement traffic signal pole.
- Provided legal advice and guidance for amended development standards for a three-lot subdivision on a ±5.6-acre site in Story Rock.
- Provided legal advice and guidance for development review of Ashler Hills Park Municipal Use Master Site Plan.
- Provided legal advice and drafted Ordinance regarding Optima McDowell Mountain Village Rezoning and Development Agreement.
- Provided legal advice and drafted Ordinance and Development Agreement regarding Scottsdale 3200 North.
- Provided legal advice and drafted Ordinance amending the purchasing thresholds in the Procurement Code.
- Provided legal advice and drafted an agreement with the Tempe and the Maricopa County Flood Control Districts to allow a partnership and cost sharing for the right-of-way acquisitions, design, construction, operations and maintenance for the Roosevelt Street Storm Drain Project.
- Provided training to the Scottsdale Police Department on legal topics such as search and seizure, domestic violence cases, and courtroom testimony.
- Provided after-hours legal assistance to the Scottsdale Police Department and/or related to any significant accident.
- After hearing citizen complaints related to a Board of Adjustment appeal of a Zoning Administrator Interpretation, the City Attorney reviewed the hearing in detail. I met with the two assigned staff lawyers to make necessary internal improvements to prevent similar problems and poor optics in the future. I further discussed the case with the City Manager and Zoning Administrator, in separate meetings, in an effort to suggest additional improvements. I had a lengthy conversation with the Appellant/Applicant, Howard Meyers, to gain a deeper understanding of his perspective of the matter and whether he felt he had received a fair hearing (even though he prevailed). The Appellant expressed serious concerns and, frankly, I agreed that the optics were poor from his point of view and explained some things that were unknown to him. This was largely regarding the fact that I must assign two lawyers to these hearings, each with separate roles, and confidential legal advice was provided to the Board, which the Appellant and Zoning Administrator were unaware of. Following my internal review and analysis, I sent the City Council a detailed report and explanation about what happened at the Board Hearing. I also sent the Council the confidential legal advice that was previously provided to the Board so that Council could see that the confidential legal advice was followed.

Through these additional efforts, I have proven my ability to listen to the citizens, take an active leadership role to admit and address failures when they occur, and seize the opportunity to make the needed improvements. This was done out of pure dedication to the City and its Citizens before I ever realized that this matter could become a topic of interest during my evaluation.

PROSECUTION HIGHLIGHTS:

- Drafted Ordinance No. 4565 amending the City's Urban Camping Ordinance to ensure it is enforceable pursuant to the 9th Circuit *Boise* case if the City obtains shelter space.
- Drafted Ordinance No. 4577 amending the City's Stopping, Standing and Parking Ordinance to authorize the towing of vehicles for certain parking violations.
- Two Scottsdale Prosecutors were awarded 2022 City Manager's Awards for their work on domestic violence prosecutions.
- **Prosecutors attended jail court 365 days a year!**
- In support of veterans and active-duty military personnel:
 - Participated in the East Valley Regional Veterans Court;
 - Provided training to Luke Air Force Judge Advocate Corp personnel on how to prosecute domestic violence cases and provide victim advocacy.
- Implemented a Scottsdale DUI Resource Prosecutor Program to assist many prosecutorial and law enforcement agencies throughout the state through technical assistance and training programs.
- Helped train new prosecutors from other agencies through the APAAC new prosecutor course.

VICTIM SERVICES HIGHLIGHTS:

- Implemented texting capabilities to communicate more effectively with victims, such as when a victim may be unable to use a phone because it is being monitored by a domestic violence offender.
- Implemented a transportation pilot program to help victims with transportation costs, allowing them to access resources and attend court hearings. To date, the program has assisted five victims at a cost of only \$150.
- Conducted a successful donation drive for Control-Alt-Delete, a charity that assists victims of domestic violence.
- Victim Services, in conjunction with the Scottsdale Police Department, prepared an instructional video for victims of domestic violence on how to obtain orders of protection.

SAFETY & RISK MANAGEMENT HIGHLIGHTS:

- Notice of Claim demands made to the City totaled **\$38,402,645.59**. The Safety & Risk Management Department has spent a total of **\$366,237.93** towards the settlement of liability claim demands received this fiscal year, which represents **1%** of all liability claim demands made against the City this fiscal year.
- A total of \$876,051 in liability claim settlements were made during this fiscal year, including pending Notices of Claims received in prior fiscal years.

- Risk has recovered **\$1,173,605** in subrogations (excluding property tax reimbursements). Risk has, therefore, recovered **\$290,218** more than it spent in settling liability claims so far this fiscal year.
- Implemented automated notifications for employees' Commercial Driver's License and Medical Certification expirations.
- Updated incident and claim reporting forms to more effectively gather pertinent data to help recognize trends to prevent future accidents. This helps to refocus the City on safety, risk mitigation and loss prevention rather than simply paying and adjusting claims.
- Analyzed and investigated **727** incidents reported through the Risk Department's online portal.
- Reviewed over **500** contracts originating from various City departments to ensure proper risk transfer language, insurance requirements, and other risk considerations are mitigated.
- Achieved a **70% savings rate** on all medical procedure payments despite the rising costs of medical procedures and services by changing medical bill review provider and negotiating a new contract.

(Workers Compensation)

- Reduced outstanding reserves by a total of **\$4,935,216.10** this fiscal year. These reductions were related to medical, expense and indemnity obligations of the City.
- Met monthly with Police, Fire, Solid Waste, and Water representatives. These Departments represent over 85% of the claims generated by, or on behalf of, the City.
- FY 21/22 Claim Count: 214, FY 22/23 Claim Count: 191. **Reduction of 23 claims this fiscal year.**
- Workers' Compensation Adjuster (Fire) performing station visits to promote awareness and provide customer service.
- Developed and presented new Workers' Compensation 101 PowerPoint to Public Safety employees which provides an overview of the City of Scottsdale's Workers' Compensation Program and the process for filing a claim with the Industrial Commission of Arizona.

(Claims Administration)

- Analyzed and made decisions on **215** Notices of Claims (General Liability and Auto Liability).
- Completed over **171** field investigations regarding liability, property, and vehicle damage claims.
- Consulted with the City Treasurer on increasing department deductibles related to first-party property damage claims within the City, currently pending City Council approval.
- Developed a Total Loss Standard with the Fleet Department to address the accounting related to totaled City-owned vehicles.
- Created report (shared with the City Manager's organization) detailing the liability notices of claims received by the City on a monthly basis.

(Safety, Health & Loss Prevention)

- Received, processed and approved 89 Loss Prevention Grants totaling \$158,000.
- Completed 217 Ergonomic Assessments, which included replacements/upgrades to office workstation furniture and work processes to prevent and mitigate injuries related to Musculoskeletal Disorders (MDS).
- Developed RFP for solicitation of an integrated rewards and recognition system for the citywide expansion and relaunch of the “Safety Always” incentive program. Contract was awarded to eGifter and implementation expected to occur in late June, 2023.
- Developed and implemented the “See Something Say Something” Program to incentivize City employees to identify potential hazards or risks within City buildings and/or on City-owned or leased property. The Program’s aim is to increase awareness of these hazards and mitigate potential losses by remedying them.
- 276 NEW employees completed the new 100% online Onboarding Safety and Health training modules via ScottsdaleU.
- Planned and organized employee appreciation breakfast/luncheons as part of our Safety and Health Rewards and Recognition program for SPD, Water Department, City Courts, and Solid Waste.
- **Completed Arizona OSHA (ADOSH) and/or United States Bureau of Reclamation (USBR) compliant Safety and Health Inspections for the buildings and the operations and services provided, which resulted in identifying more than 140 workplace hazards which have been, or are in the process of being, corrected.**
 - **WestWorld and Waste Management Open (prior to key events including TPC, Barrett Jackson, Arabian and Quarter Horse Shows, Bike Week, etc.)**
 - **Justice Center, Courts**
 - **Fire Station 605**
 - **North and South Corp Yard - all buildings and operations**
 - **Safety and Fire inspections were completed by our reinsurer Zurich at Civic Center Library and City Hall**

FY 2023/24 GOALS

Civil Department Goals:

- Support the Council, Charter Officers, and all City staff while limiting the City’s liability exposure with prompt, proactive legal advice.
- Defend as much litigation in-house as resources allow as efficiently as practical.
- Support the City’s public safety efforts through training and after-hours legal support.

- Onboard and train two civil lawyers to fill existing vacancies. These attorneys are necessary in order to provide in-house legal advice regarding environmental, Superfund and natural resource matters, as well as in real estate, planning and zoning matters.

Prosecution Department Goals:

- Efficiently and justly manage and prosecute the high number of cases and charges Prosecution expects to receive during the upcoming fiscal year.
- Support successful prosecution of short-term vacation and rental ordinance violations, along with nuisance party and unruly gathering ordinance violations.
- Onboard and train two Prosecutors to fill existing vacancies.

Victim Services Department Goals:

- Efficiently and compassionately support the high volume of victims expected during the upcoming fiscal year.

Safety & Risk Management Goals:

- Continue to refocus the organization on safety and loss prevention in an effort to lower accident rates.
- Work closely with the City Manager and Executive Team to address major safety and risk exposure concerns.
- Continue building and promoting safety “Blue Walls” throughout City buildings as resources allow.

Exhibit 1

Litigation Department – Significant Accomplishments

The following represent some significant litigation **WINS** where either **no money or a nuisance value amount was paid** and the case was primarily **handled in-house by the City Attorney's Office**:

DISMISSALS:

- (*Torres v. COS*) Plaintiff sued the City and multiple defendants stemming from a death in Old Town in a pedicab accident wherein the Plaintiff claimed that the City failed to adequately regulate pedicabs and allowed it to operate by requiring licensure. Our team thoroughly analyzed, investigated, and researched the claims made against the City and persuaded the Plaintiff to voluntarily dismiss the City from the lawsuit, with no monies paid by the City. Plaintiff had demanded \$4.76M in settlement from the City in his Notice of Claim.
- (*Washington v. COS*) Prevailed on briefings and oral argument regarding Plaintiffs' request for declaratory and injunctive relief related to hangars at the Scottsdale Airport. The case has now been dismissed for lack of further prosecution.
- (*Kuchinsky v. COS*) Plaintiff sued the City after he sustained serious injuries from a scooter accident in Scottsdale. After extensive litigation, pre-trial motions and oral advocacy, the Court dismissed the case in its entirety one month before trial, with no monies paid to the Plaintiff. Plaintiff's original demand was \$5M, with over \$500,000 in medical specials. Co-defendants previously settled with Plaintiff leaving the City as the only Defendant.
- (*Houser v. COS*) Plaintiff sued the City and multiple police officers following being involuntarily committed to a mental health facility. Following extensive internal investigation and research, our team persuaded Plaintiff's attorney to voluntarily dismiss the case in its entirety with no monies paid to the Plaintiff. Plaintiff had not issued a settlement demand but sought compensatory and punitive damages.
- (*Liberti v. COS*) Our team prevailed in federal court – all the way to the U. S. Supreme Court – on a wrongful death civil rights lawsuit stemming from an officer involved shooting. Plaintiff then sued *again* claiming that the involved officers' body camera footage was altered in the first lawsuit. The Superior Court granted our team's motion to dismiss this second lawsuit. Plaintiff has appealed the ruling to the Arizona Court of Appeals. The case has been fully briefed, argued, and awaits the Court's decision. Plaintiff has demanded \$10M to settle this lawsuit.
- (*Olson v. COS*) Plaintiff sued, demanding \$1.5M, after she was injured in a bicycle accident caused when she hit a pothole. Following significant discovery to establish that the location of the pothole was not within City limits, our team obtained a voluntary dismissal of the City with no monies paid to the Plaintiff.

- (*Smith-Jeter v. COS*) Plaintiff claimed civil rights violations and discrimination related to her housing. Following discovery and briefing, our team obtained the dismissal of the case with no monies paid to Plaintiff. Plaintiff had demanded \$26M to settle.
- (*Bahr v. COS*) Prevailed on Plaintiff's appeal from a Scottsdale Board of Adjustment denial of a request for a disability accommodation to allow a residential wall one foot higher than allowed by City code. Plaintiffs filed a Special Action claiming the Board's decision violated the Fair Housing Act ("FHA"). The Superior Court ruled in favor of the City. The Court of Appeals affirmed, concluding there was no abuse of discretion in the Board's determination because the plaintiffs failed to prove the requested accommodation was necessary under the FHA.
- (*Neptune v. COS*) Plaintiff swim club sought \$1.365M in their Notice of Claim for lost revenue and cost projections for a contract bid they were not granted, which included an initial three-year life of the contract plus two one-year extensions. The club sued the City asking the court to compel the City to award a license to it to use City pools as a sponsored team for competitive swimming and to declare that the license issued by the City in 2016 to another club violated the State's gift clause. The City prevailed on its motion for summary judgment and on appeal at the Court of Appeals, with no monies paid to the Plaintiff. The Plaintiff recently filed a Petition for Review in the Arizona Supreme Court and the City is preparing its brief in opposition.
- (*Wasson v. COS*) Following discovery and briefing to dismiss the case, our team successfully obtained a voluntary dismissal from the Plaintiff, with no monies paid. Plaintiff had sought \$50,000 in damages claiming he was falsely arrested.
- (*Ng v. COS*) Plaintiff sued following being injured in a trolley accident. Following our team's research and negotiations, we were able to obtain a voluntary dismissal with no monies paid to the Plaintiff. Plaintiff sought \$500,000, which included \$91,000 in medical bills.
- (*Kirby v. COS*) Plaintiff filed a lawsuit claiming that the City violated the Contract Clause of the United States Constitution when it issued a building permit to the owner of a lot in Plaintiff's neighborhood because the plans showed a two-story home, which allegedly violated the neighborhood's CC&Rs. Following an evidentiary hearing in which the Court ruled in favor of the City and denied Plaintiff's request for a preliminary injunction against the City, Plaintiff agreed to dismiss the City and take nothing. Plaintiff did not make a monetary demand in the lawsuit, but sought attorneys' fees and costs, which at the end of the evidentiary hearing exceeded \$37,000.
- (*Barcenas v. COS*) Lawsuit brought by a contract janitorial worker who claimed she was injured at the Civic Center Library when a bathroom stall door fell on her. Plaintiff sought \$105,000 in damages. The City tendered the lawsuit to the janitorial company who refused to accept the tender. Our team continued to vigorously defend the suit and advance legal arguments in support of the janitorial company accepting the tender. Our

team persuaded the Plaintiff and janitorial company to settle Plaintiff's claims and to dismiss the City from the lawsuit with no monies paid by the City.

- (*Hoon Koo v. COS*) Claimant purchased an undersized non-conforming (to the zoning) lot near Thunderbird and the 101. The neighborhood opposed any development on such an undersized lot. Claimant filed a rezoning case and claimed that the City had a legal obligation to rezone the property because nothing could be built on the property. The City Attorney's Office rejected this legal premise under the facts of this case and the Council denied the rezoning case. Claimant requested a variance from the Board of Adjustment but was denied. Thereafter, Claimant appealed to Superior Court. After consideration of the legal briefs and oral arguments, the court affirmed the Board of Adjustment's decision, finding in favor of the City. No monies were paid to the claimant.
- (*Stuart v. COS*) Prolific litigant against the City filed a civil rights lawsuit against the City, the Mayor, Members of Council, and City employees stemming from the City's attempt to collect a court judgment that arose from a prior lawsuit against the City related to the McDowell Mountain Country Club. The City successfully obtained dismissal after extensive briefing in the District Court. Plaintiff appealed to the Ninth Circuit Court of Appeals. The matter is fully briefed and awaiting the Court setting a date for oral argument or rendering a decision. Plaintiff originally demanded \$12.75M to settle and is requesting punitive damages against the individual defendants.
- (*Ball v. COS*) After extensive briefing in the District Court, the City successfully obtained dismissal of two separate lawsuits filed by Plaintiff. Both brought tort and constitutional claims against the City and its police and prosecution employees, stemming from his arrest on two occasions and service of a search warrant at his residence. Plaintiff originally demanded \$10M to settle the case. Plaintiff has appealed both cases to the Ninth Circuit Court of Appeals and the cases are currently being briefed.
- (*Greenleaf v. COS*) Claimants/parents filed a notice of claim seeking \$10M and punitive damages for claims related to the shooting death of their son by a Scottsdale Police Officer at Honor Health Osborn. Their decedent had displayed a rifle, acted aggressively, and once police arrived, aggressively approached officers in disregard of commands while holding a knife. By marshaling the facts and law of the case, our team successfully persuaded the claimants' attorney that Claimants would not be able to prevail in a lawsuit against the City or its officers, and no suit was filed prior to the expiration of the statute of limitations on the parents' claim.
- (*Nuwesra v. COS*) Plaintiff sought \$95,000 in damages for injuries she allegedly sustained as a passenger on a trolley. The case was tendered to the insurer for the trolley. An arbitrator found in favor of Defendants and ordered Plaintiff to pay \$1,958 in taxable costs. This matter was dismissed at no cost to the City.
- (*Clegg v. COS*) Plaintiff sued after being seriously injured in a bicycle accident on a multi-use path. The City had hired a contractor to perform work on the path and the contractor left an unguarded hole on the path – a dug-out manhole cover measuring 6-8 inches deep and 2-3 feet in diameter. Plaintiff sought \$750,000 in damages, including \$112,600 in

medical bills. Our team researched and analyzed the claim, determined the path was not maintained by the City, located the applicable contracts, and tendered the claim to the contractor's insurer. Eventually, the City was dismissed with no monies paid by the City.

SETTLEMENTS. Following investigations, litigation, and (in some instances) the filing of dispositive motion(s), the City Attorney's Office successfully negotiated settlements in the following cases:

- (*Buntin/Carpenter v. COS*) Plaintiffs sought a combined \$4M for claims of injuries, property damage, and wage loss resulting from a rear-end collision caused by a City garbage truck. The plaintiffs were stopped at the time of the collision and shared no fault for the accident. Plaintiffs' past medical bills exceeded \$170,000, with injuries including head, neck, back, and hip injuries. Plaintiffs also claimed over \$756,000 in lost earnings from their real estate practice and loss of household services. At trial, Plaintiffs intended to demonstrate over \$1M in damages. Plaintiffs demanded \$4M to settle their claims. After a lot of tough negotiating, Plaintiffs eventually agreed to take a total of \$225,000 at mediation.
- (*Garcia v. COS*) High profile case with significant media interest. Plaintiff sued alleging false arrest and other civil rights allegations stemming from Plaintiff's arrest for a hit-and-run accident she did not commit. Following investigation, discovery, detailed briefing, and extensive preparation for trial, Plaintiff agreed to settle the case for \$200,000. Plaintiff had demanded \$475,000.
- (*Kranz v. COS*) Trip and fall on a significantly elevated sidewalk panel, east of intersection of 94th Street and Bell Road. Plaintiff fell forward, landing on her face and left arm. She required stitches in her chin, a CT scan to rule out serious cranial fractures, and dental surgery. She also claimed the fall caused tinnitus and bleeding in her ear. She incurred \$27,400 in past medical bills with future bills anticipated. Plaintiff's photographs of the area showed a significant elevation of the panel. The area was ground down by City maintenance crews before we could take our own photographs or measurements, putting us at a disadvantage in litigation. The City must keep its sidewalks reasonably safe for travel. Plaintiff demanded \$65,000 to settle. Our office negotiated a settlement of \$23,342.
- (*Veatch v. COS*) After Plaintiff was terminated from the City, Plaintiff claimed more than \$32,000 in unpaid overtime wages under the Fair Labor Standards Act. Plaintiff had a regular practice of logging-on to his computer early, prior to the start of his shift. Management was aware of this practice but allowed it to continue, which would hurt our chances of prevailing at trial. Additionally, had Plaintiff prevailed at trial, he would have been entitled to liquidated "double damages" (\$64,000) and an award of attorney's fees and costs in the tens of thousands of dollars. Our team negotiated a settlement of \$20,000.
- (*Fountain v. COS*) Plaintiff was walking in Old Town when he caught his foot on a significantly raised sidewalk panel and suffered a bad fall. He broke his arm and sinus

cavity upon impact. His medical bills totaled just over \$37,000. Photographs that Plaintiff's friend took right after his fall show the sidewalk panel was elevated 1 to 2 inches above the adjacent panel. The area was ground down by City maintenance crews before expert witnesses could measure and photograph the sidewalk, putting us at a disadvantage in litigation. The City must keep its sidewalks reasonably safe for travel. Plaintiff demanded \$300,000 to settle. After significant litigation, our team negotiated a settlement of \$78,000.

- *(Fuciarelli)* Claimant is a well-funded doctor who has sued the City on several prior occasions. In this instance, Claimant yelled at a family thinking they had a loose dog which had scared Claimant's child. Claimant later found a father and young son owned the dog and angrily confronted them. The father felt Claimant was aggressive with his son and pushed Claimant to the ground. Claimant left the park and called the police. Claimant was arrested for disorderly conduct; the father was not arrested. The arresting officer did not get contact information from the family (the alleged victims). After criminal charges against Claimant were dismissed, Claimant threatened to sue for false arrest and claimed the police were targeting him in retaliation for the prior encounters with the City. Our team negotiated a settlement of \$20,000 prior to suit being filed.
- *(Kraker)* Trip and fall when Claimant stepped in a hole at the Xeriscape Garden. Settled for \$500 prior to suit being filed.
- *(Haskie)* Trip and fall over a wooden beam at WestWorld. Claimant required immediate medical attention and went home on crutches. This matter settled for \$598 prior to suit being filed.
- *(Kelly)* Claimant alleges she tripped on an uneven sidewalk and fell, resulting in a broken tooth and multiple injuries to her face and body. This matter settled for \$3,350 prior to suit being filed.
- *(McClary)* Claimant alleges she tripped on a large hole in the sidewalk and fell, resulting in a large portion of her big toe being torn off. This matter settled for \$4,500 prior to suit being filed.
- *(Riggs)* An out-of-town tourist alleges she was riding an e-bike on a canal path and struck a bollard, causing injuries, which required surgery. This matter settled for her medical specials at \$3,063 prior to suit being filed.
- *(DCGS, LLC / Shipp)* Claimant alleges a water main burst causing flooding to three residential/rental homes. This settlement resolved two of the three property claims for \$116,084 prior to suit being filed.
- *(State Farm/Reddell)* Insurer made claims for property damage as a result of a motor vehicle accident between insured and a Scottsdale Police Officer. This matter settled for \$20,000 prior to suit being filed.



Coalition of Greater Scottsdale
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7 June 2023

To: Scottsdale City Council

Re: Charter Officer hearing 20 June 2023 for City Attorney

As you evaluate the status of the contract for City Attorney, Sherry R. Scott, we would appreciate if you would include our comments, which are based on just one case that COGS was intimately involved with. We recognize there are many other instances of legal staff providing services and advice that we are not cognizant of that may contradict this one experience, however this one case would seem to indicate that legal staff has to do better research before offering any advice to council or other staff.

COGS-Coalition of Greater Scottsdale—supported the Carriage Trails subdivision challenge heard on 3 April 2023 before the Board of Adjustment involving 6-UP-2022, Crown Castle Wi Fi . It requested to install a 60 plus foot cellular tower (to be rented to 3 other users) that would not be in compliance with the existing city code for height in the R1-70 zoning district, that applies to the land, as well as the Environmentally Sensitive Lands Ordinance (ESLO) and the Desert Foothills zoning Overlay (DFO).

Issue 1: COS staff stated that Howard Myers and Carriage Trail subdivision are not the required aggrieved party. The BOA in a 6-0 vote determined the residents ARE aggrieved party.

Issue 2: The BOA determined that the subject of this case is within their jurisdiction and therefore by a 6-0 vote they ruled to hear the case.

Issue 3: The BOA Commissioners questioned the original intent of the existing code and ordinances. Howard Myers, spokesperson, was also involved in developing the wireless ordinance and the height restrictions in the ESLO and DFO, so he could verify the protection of desert environment and views and land uses were the Task Force members' intent.

Final Decision: The BOA ruled that COS staff made the flawed interpretation of the wireless ordinance to try to allow building height restrictions to be exceeded with a simple use permit. The BOA in a 6-0 vote determined that the staff interpretation for the case could not be supported by the facts. Therefore, the city lost this case....not to mention the 1.5 hour grilling by Commissioner Donahue that highlighted the staffs' unpreparedness.

COGS COMMENTARY:

The COS staff presenter continuously defended himself by stating their case was a “team and legal [department]” research, preparation, and final interpretation. COGS submits to the city council that IF this met the City Attorney’s oversight standards then it was an example of unsatisfactory work.

1. The staff introduced a North Carolina case to “prove” Carriage Trails as not an aggrieved party. Commissioner Donahue then informed staff that they had FAILED to follow that very case and the plaintiff had won on appeal. WHY didn’t our Legal Dept catch that? Why aren’t they researching AZ law asked the commissioner?
2. The staff and legal left the perception that they are “flexible” first to misinterpret existing codes and ordinances for a specific applicant and secondly to return after the announced challenge to “amend” their interpretation to further promote the applicant’s request.

The 3 April 2023 Board of Adjustment hearing:

https://scottsdale.granicus.com/player/clip/11798?view_id=61&redirect=true&h=e73c8b28f0e2cade473032d2af995a9ff

Respectfully, The COGS Board of Directors,

Marilynn Atkinson, John Davis, Sonnie Kirtley,

Howard Myers, Stan Morganstern, Copper Phillips,

Christopher Schaffner, and Andrew Schenck