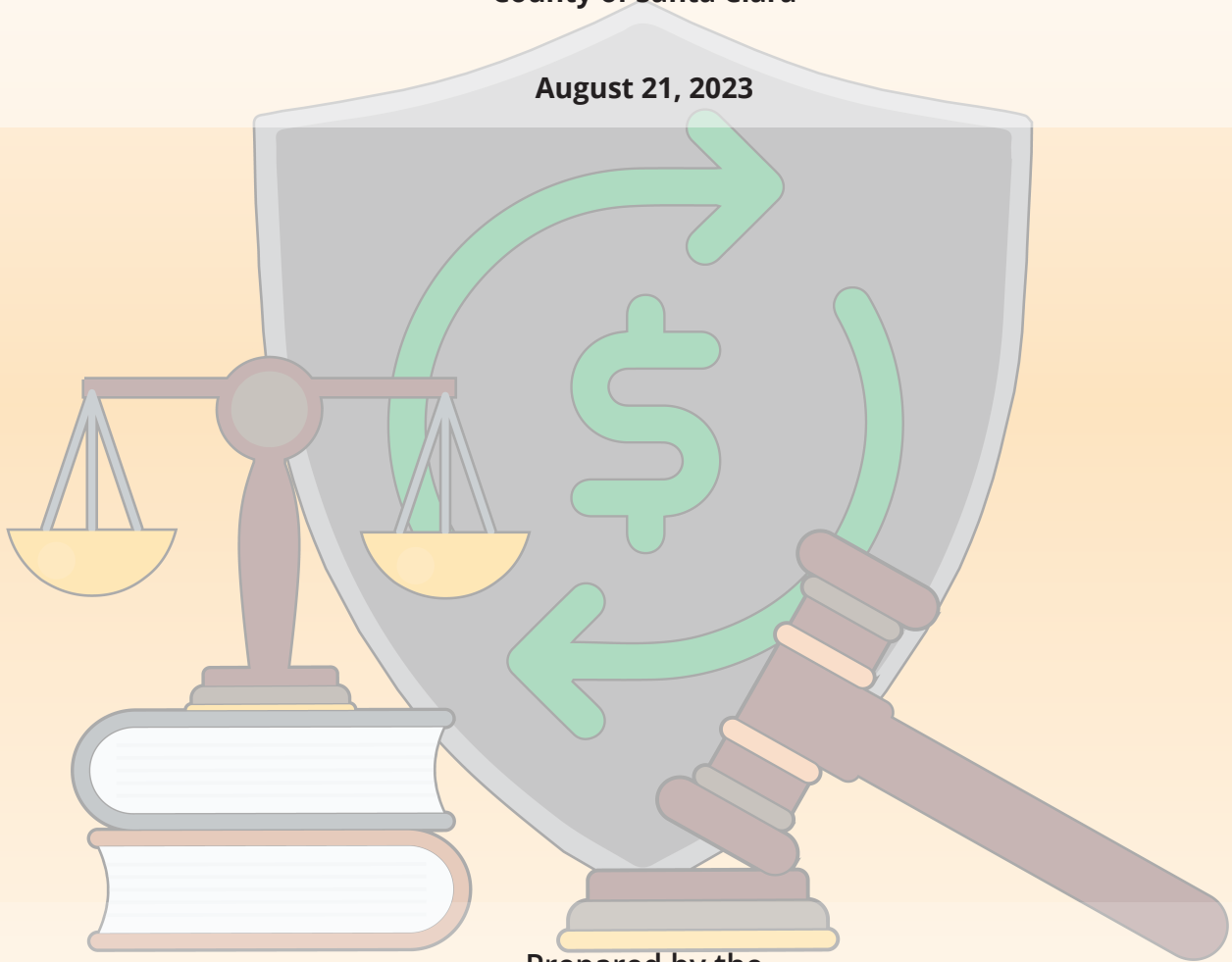


Management Audit of the County of Santa Clara Office of the District Attorney's Consumer Protection Unit

Prepared for the Board of Supervisors of the
County of Santa Clara

August 21, 2023



Prepared by the

Board of Supervisors Management Audit Division
County Administration Building, East Wing, 10th Floor
70 West Hedding Street
San Jose, CA 95110

(408) 299-6435

THIS PAGE LEFT BLANK

County of Santa Clara

Board of Supervisors

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110-1770
(408) 299-6435 TDD 993-8272

Contract Auditor: Harvey M. Rose
Associates, LLC
E-mail: cheryl.solov@bos.sccgov.org

August 21, 2023

Supervisor Otto Lee, Chair
Supervisor Susan Ellenberg, Vice Chair
Board of Supervisors' Finance and Government Operations Committee
70 West Hedding Street San Jose, CA 95110

Dear Supervisors Lee and Ellenberg:

We have completed the Management Audit of the District Attorney's Consumer Protection Unit. This audit was added to the Management Audit Division's work plan by the Board of Supervisors of the County of Santa Clara, pursuant to the Board's power of inquiry specified in Article III, Section 302(c) of the Santa Clara County Charter. This audit was conducted in conformity with generally accepted government auditing standards as set forth in the 2018 revision of the "Yellow Book" of the U.S. Government Accountability Office. The purpose of this audit was to examine the Consumer Protection Unit to identify opportunities to increase their efficiency, effectiveness, and economy.

The report includes three findings and nine recommendations related to the Unit's Mediation Services team, public outreach, and tracking performance and workload. All nine recommendations are directed to the Consumer Protection Unit.

The District Attorney's Office provided a written response to the audit report as Attachment A beginning on page 33, in which the Office agreed with seven recommendations, partially agreed with one recommendation, and disagreed with one recommendation. The nine recommendations and the District Attorney's responses are as follows:

- Agree: 1.1 Develop and adopt performance metrics for the Consumer Protection Unit to track the unit's efficiency at managing consumer complaints, investigations, and prosecution as well as outreach efforts.

Board of Supervisors:

Sylvia Arenas
District 1

Cindy Chavez
District 2

Otto Lee
District 3

Susan Ellenberg
District 4

S. Joseph Simitian
District 5

County Executive: James R. Williams

- Agree: 1.2 Develop reports in CiberLaw to monitor accuracy of staff/team assignments, the open/closed status, closure reasons, and file locations (when applicable) for criminal cases in order to confirm attorney case lists are accurate and up to date.
- Partially Agree: 2.1 Include outreach and mediation procedures in the District Attorney's policy and procedure manual.
- Agree: 2.2 Partner with community groups and County Departments, including those that provide mediation services, to conduct proactive outreach to the public.
- Agree: 2.3 Update the consumer outreach presentation to include consumer complaint examples and examples of what can be reported as a criminal offense to enforcement staff.
- Agree: 2.4 Create training videos for the public on services provided by Mediation Services and common scams to post on the Consumer Protection Unit webpage.
- Disagree: 3.1 Update the Policy Manual to include steps for the hiring process for Consumer Mediators.
- Agree: 3.2 Recruit and train volunteers from the community to assist with mediation or outreach tasks.
- Agree: 3.3 Identify and establish opportunities to work with other County departments that provide mediation services to coordinate mediation service referrals to allow for a streamlined continuity of services for the public.

We would like to thank the management and staff of the District Attorney's Consumer Protection Unit for their assistance and cooperation with this audit. In addition, we are grateful to the Office of Mediation and Ombuds Services for their time and feedback during this audit.

Respectfully submitted,



Cheryl Solov
Management Audit Manager

CC: Sylvia Arenas, Supervisor
Cindy Chavez, Supervisor
Joseph Simitian, Supervisor
Tony LoPresti, County Counsel
James Williams, County Executive

Board of Supervisors:

Sylvia Arenas
District 1

Cindy Chavez
District 2

Otto Lee
District 3

Susan Ellenberg
District 4

S. Joseph Simitian
District 5

2-025

County Executive: James R. Williams



Table of Contents

[This document is linked. Click on a section to view.](#)

| | |
|---|----|
| Executive Summary | 1 |
| Introduction | 3 |
| Section 1: Tracking Performance and Workload | 15 |
| Section 2: Public Outreach | 21 |
| Section 3: Mediation Services | 27 |
| Attachments A-C | 31 |
| Attachment A: Department Response | 33 |
| Attachment B: Public Outreach Presentation given September 23, 2022 | 41 |
| Attachment C: Department Accomplishments | 53 |

THIS PAGE LEFT BLANK

Executive Summary

Finding 1: Tracking Performance and Workload

The District Attorney's Office (DAO) does not formally track performance metrics for the Consumer Protection Unit ("the Unit"). Further, the Unit does not consistently use the internal case management system (CiberLaw) to track civil consumer complaints as they develop into investigations or cases. According to Unit management, CiberLaw was designed to handle criminal case types and is not well-suited for consumer protection civil cases. The Unit, therefore, does not record investigations of complaints and does not consistently record active civil case information or staff assignments in the system, instead they keep file folders in their shared drive. The Unit requires attorneys to maintain their own active case lists and provide that information to the Supervising Deputy District Attorney (SuDDA) on a monthly basis. Though the case lists may be a useful tool for the attorneys and the managers, the lack of uniform data within CiberLaw limits the office's ability to track and report office-wide performance metrics.

The Unit should develop performance metrics for the Consumer Protection Unit which will help track the unit's efficiency, efficacy and capacity, as well as its fairness and justice, handling consumer complaints, investigations, and prosecution. Additionally, the Unit should develop reports in CiberLaw to monitor accuracy of case data such as: staff/team assignments, the open/closed status, closure reasons, and file locations (when applicable) for all complaints, investigations, and cases.

Finding 2: Public Outreach

Although Mediation Services conducted 64 public outreach presentations in the three years from FY 2017-18 through FY 2019-20, the Team conducted no outreach events in FY 2020-21 or FY 2021-22. Mediation Services had their most recent outreach event on September 23, 2022, which was the first such event since March 12, 2020. While DAO staff have stated that the decrease in outreach was due to the COVID-19 pandemic, the Department has not innovated to provide online presentations or otherwise alter the outreach program due to the public health emergency. Separately, the vacant Consumer Mediator position may have impacted the Consumer Protection Coordinator's ability to focus on outreach (see Section 3, starting on page 27 of this report on Mediation Services for additional information and analysis). Further, the Unit does not reach out to communities or work with community partners or other County departments meeting with the public to increase outreach. Rather, the Unit responds to members of the community who reach out to the Department for education on services and scams. This may be due to turnover and/or a lack of policies surrounding outreach. There are likely many missed opportunities to further educate the public regarding consumer fraud and scams due to the lack of outreach. The outreach presentation itself does not specify the types of complaints Unit takes and does not explain the role of the enforcement side of the unit. Therefore, the public may not be aware or fully informed of the services available or the warning signs of consumer protection issues.

The Consumer Protection Unit should partner with community groups and County departments to conduct proactive outreach to the public. The Unit should also improve the outreach presentation to include consumer complaint examples and examples of what can be reported as a criminal offense to Enforcement staff. The Unit should include outreach and mediation procedures in the Department's policy and procedure manual.

Finding 3: Mediation Services

The DAO's Policy manual does not outline the hiring process for the Consumer Protection mediator. The Unit mediator position had been vacant since October 2021, was open for applicants from November 21, 2022, through December 22, 2022, and was filled in March 2023. Management has stated that they did not quickly fill the position due to a reorganization of the Unit and a reduction of work during the pandemic. The vacant mediator position had reduced the Coordinator's capacity to focus on outreach; reducing opportunities for the public to be more aware of services provided by the Unit and potential consumer scams (see Section 2, starting on page 21, on Public Outreach Quality). Like the Consumer Protection Unit, the Office of Mediation and Ombuds Services (OMOS) mediates public complaints covering many legal topics, including consumer complaints and landlord-tenant disputes. However, the Unit does not have a formal system for coordination in place to refer applicable complaints to other departments or units which provide mediation services.

The Unit should update the Policy Manual to include steps for the hiring process for Consumer Mediators. The Consumer Protection Unit should work to identify volunteers from the community to train to help with mediation or outreach tasks. The Unit should work with County departments that provide mediation services to coordinate mediation service referrals to allow for a streamlined provision of services for the public.

Introduction

INTRODUCTION

This Management Audit of the District Attorney's Consumer Protection Unit ("Consumer Protection Unit" or "the Unit") was authorized by the Board of Supervisors of the County of Santa Clara as part of the County's Fiscal Year 2022–23 Management Audit Work Plan pursuant to the Board's power of inquiry specified in Article III, Section 302(c) of the Charter of the County of Santa Clara.

PURPOSE, SCOPE, AND OBJECTIVES

The purpose of the audit was to examine the operations, staffing, management practices, and finances of the District Attorney's Consumer Protection Unit, and to identify opportunities to increase their efficiency, effectiveness, and economy. Work on this audit began with an entrance conference on August 18, 2022, and a draft report was issued to the Consumer Protection Unit on May 26, 2023. The Management Audit Division also sent the audit draft to the Office of the County Counsel.

An exit conference was held with the Consumer Protection Unit on June 15, 2023, and a revised draft incorporating feedback from the exit conference was issued to the Consumer Protection Unit on July 27, 2023 for written response. This final report includes their written response as Attachment A on page 33.

AUDIT METHODOLOGY

As part of this management audit the Management Audit Division conducted interviews with all staff levels, executive management to line staff, working within and supporting the Consumer Protection Unit within the District Attorney's Office. Interviews were conducted virtually with staff due to the ongoing COVID-19 pandemic. A staff member from the Management Audit Division attended a public outreach presentation by the Consumer Protection Coordinator at a senior living center on September 23, 2022. Additional audit interviews included staff within Santa Clara County's Public Defender Office, Santa Clara County's Office of Mediation and Ombuds Services, and San Francisco District Attorney's Office White Collar Crimes Unit.

The Management Audit Division also reviewed the staff organization of the Consumer Protection Unit, procedure manuals, public presentation materials, annual budget data and publications containing performance measures, investigator training and evidence room logs, consumer complaint data, mediation case data, and consumer protection litigation data for criminal and civil cases. The Management Audit Division also received a virtual, redacted, tour of CiberLaw, the information system used by the District Attorney's Office.

COMPLIANCE WITH GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS

This management audit was conducted under the requirements of the Board of Supervisors Policy Number 3.35 as amended on May 25, 2010. That policy states that management audits are to be conducted under generally accepted government auditing standards issued by the United States Government Accountability Office. We

conducted this performance audit in accordance with generally accepted government auditing standards set forth in the 2018 revision of the “Yellow Book” promulgated by the U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. In accordance with these requirements, we performed the following management audit procedures:

Audit Planning – This management audit was selected by the Board of Supervisors using a risk assessment tool and an estimate of audit work hours developed at the Board’s direction by the Management Audit Division. After audit selection by the Board, a detailed management audit work plan was developed and provided to the District Attorney’s Office.

Entrance Conference – An entrance conference was held with the Assistant District Attorney and the Consumer Protection Unit managers to introduce the management audit team, describe the management audit program and scope of review, and to respond to questions. A letter of introduction from the Board, a management audit work plan, and a request for background information were also provided at the entrance conference.

Pre-Audit Survey – A preliminary review of documentation and interviews with the Consumer Protection Unit managers and staff was conducted to obtain an understanding of the unit, and to isolate areas of operations that warranted more detailed assessments. Based on the pre-audit survey, the work plan for the management audit was refined.

Field Work – Field work activities were conducted after completion of the pre-audit survey, and included:

- Additional interviews with staff working in and supporting the Consumer Protection Unit, Santa Clara County’s Public Defender Office, Santa Clara County’s Office of Mediation and Ombuds Services, and San Francisco’s District Attorney’s Office White Collar Crimes Unit;
- Attending a public outreach presentation by the consumer protection coordinator;
- Analysis of de-identified consumer complaint and mediation data provided by the Consumer Protection Unit;
- Analysis of de-identified criminal and civil case data provided by the Consumer Protection Unit;
- Analysis of data provided by the District Attorney’s Bureau of Investigations;
- Further review of documentation and other procedural materials provided by the Consumer Protection Unit;
- A review of best practices publications, annual budget data and publications (from Santa Clara County and other counties) containing performance measurement information; and

Draft Report – On May 26, 2023, a draft report was prepared and provided to the Consumer Protection Unit containing our preliminary findings, conclusions, and recommendations.

Exit Conference – An exit conference was held with the Assistant District Attorney and Consumer Protection Unit managers on June 15, 2023, to collect additional information pertinent to our report, obtain their views on the report findings, conclusions, and recommendations, and make corrections and clarifications as appropriate. Following the exit conference, a revised draft was provided to the Consumer Protection Unit for its use in preparing its formal written response.

Final Report – A final report was prepared following the exit conference and provided to the Assistant District Attorney and Consumer Protection Unit managers on July 27, 2023. A formal written response to the report was requested and is attached to this final report (see Attachment A on page 33).

Limitations to Audit Scope

The scope of this audit was limited to the fieldwork activities listed above due to the confidential nature of the District Attorney's criminal and civil investigations. We were not permitted to review case files for completed or in process investigations, prosecutions, or civil litigation. We were also not permitted to review mediation files. The Management Audit Division reduced the project hours budgeted for this audit to reflect this scope limitation.

BACKGROUND

Overview of the District Attorney's Consumer Protection Unit

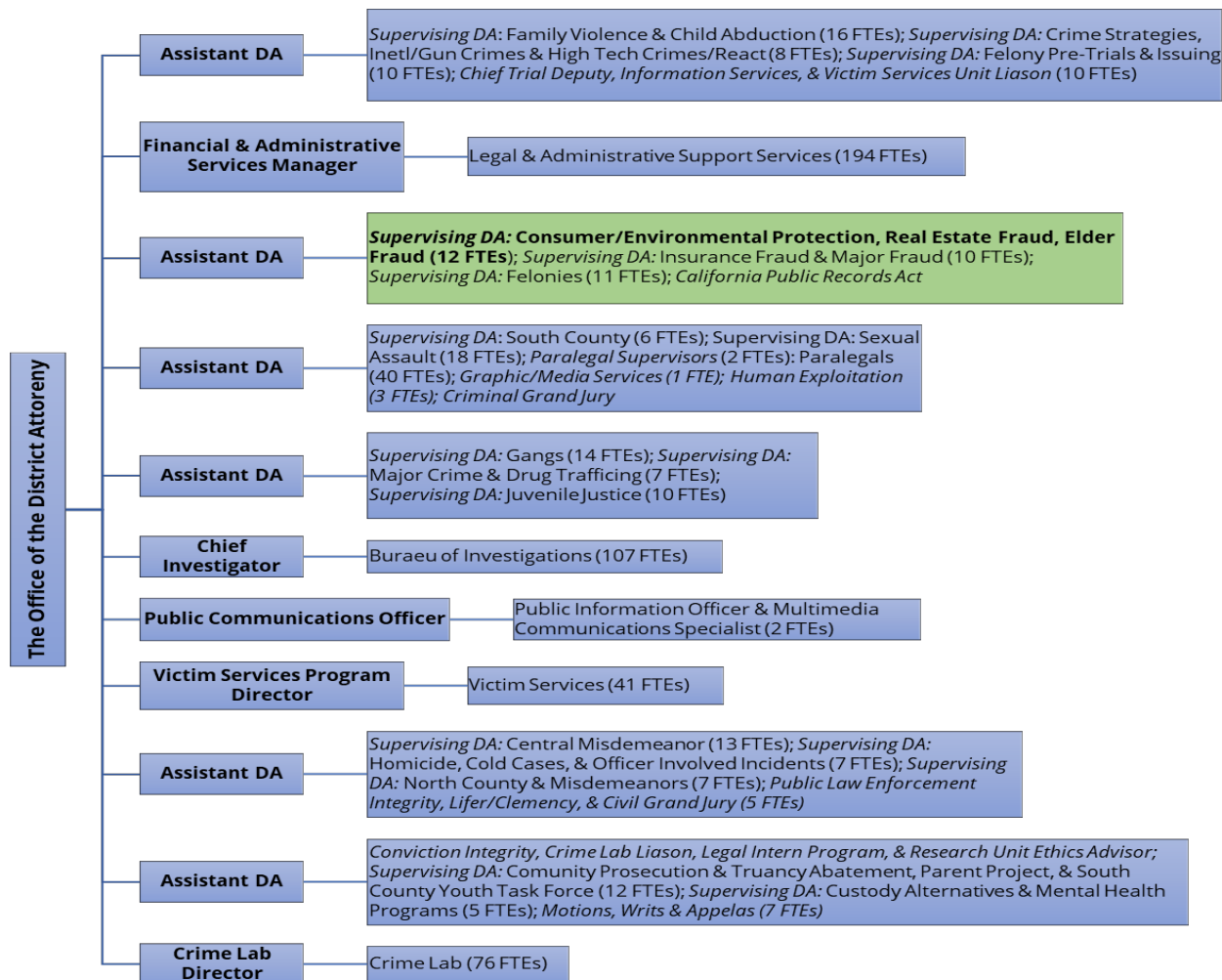
The District Attorney's Consumer Protection Unit ("Consumer Protection Unit" or "the Unit") consists of one cost center (cost center 9842) within the District Attorney's Office budget (Budget Unit 0202). The Unit's modified budget for Fiscal Year 2022–23 was \$17,920,840 (representing 11.2% of the modified budget for the District Attorney's Office (\$159,453,247)). The Unit's recommended budget for Fiscal Year 2023–24 was \$16,787,311, which is 10.1% of the modified budget for the District Attorney's Office (\$165,789,888). The Unit's Management have stated that the Consumer Protection Unit's budget is mostly Reserves, due to a fund balance that has increased, pursuant to state law (Business Professions Code Section 17206), through years of the Unit's work in negotiating civil settlements in consumer protection cases. According to Management, the Unit's modified budget for Fiscal Year 2022–23 was \$17,920,840, of which \$15.5 million was held in reserve, and the recommended budget for Fiscal Year 2023–24 was \$16,787,311, more than \$15 million of which is held in reserve. Staff for the District Attorney's Office are budgeted through separate classification/function cost centers rather than through the Unit's cost center (e.g., Paralegal Services - 3833, Legal Support Services - 3834, and Attorney - 3836). According to Management, the Unit makes up 3% of activities for the District Attorney's Office in terms of full-time employees.

As of September 16, 2022, the Unit has 10 staff whose focus and main responsibilities are consumer protection mediation or litigation: a consumer protection coordinator, consumer mediator, senior office specialist, five deputy district attorneys, and two criminal investigators.¹ There are three additional deputy district attorneys working

¹ As of March 23, 2023, the consumer mediator position had been filled and had previously been vacant for over a year. The District Attorney's Office opened the position for applicants from

on environmental protection and elder fraud cases who have responsibility for some consumer protection cases. The Consumer Protection Unit is also supported by three legal secretaries and two senior paralegals whose responsibilities include, but are not limited to, consumer protection cases. See Figure I.1 below and Figure I.2 on page 7 for organizational charts of the District Attorney’s Office and the Consumer Protection Unit, respectively.

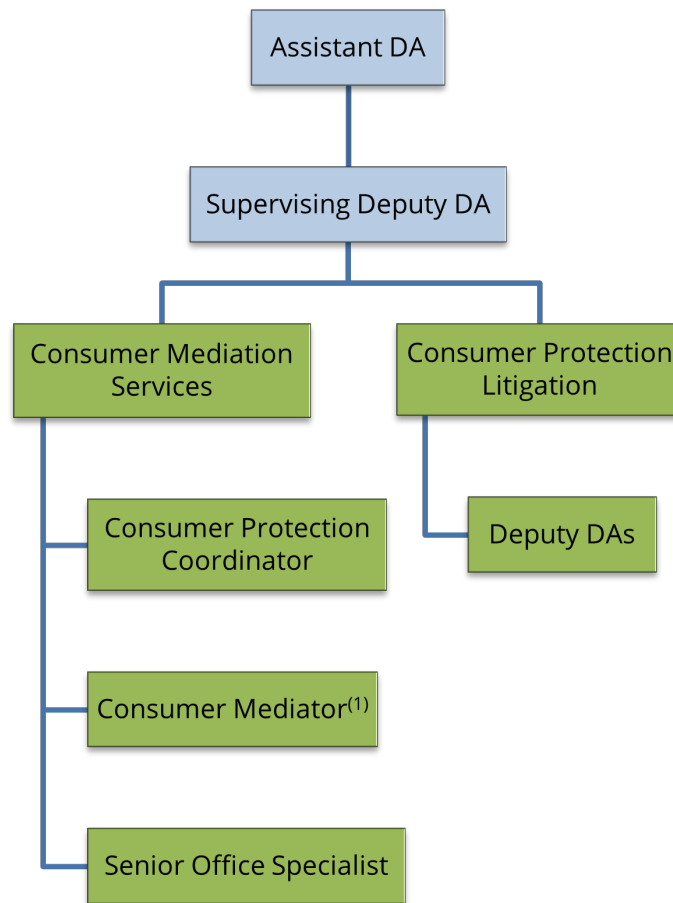
Figure I.1: Organization of the District Attorney’s Office: Location of Consumer Protection Unit and Staff Who Support the Work of This Unit



Source: Created by the Management Audit Division based on organizational charts from the District Attorney’s Office as of June 19 and July 24, 2023.

November 21, 2022 through December 22, 2022.

Figure I.2: Organization of the Consumer Protection Unit



Source: Created by the Management Audit Division based on organizational charts from the District Attorney's Office.

Note: (1) As of March 23, 2023, the consumer mediator position had been filled and had previously been vacant for over a year. The District Attorney's Office opened the position for applicants from November 21, 2022 through December 22, 2022.

Consumer Protection Unit Functions

The Consumer Protection Unit is responsible for prosecuting criminal and civil cases where an entity has engaged in illegal or fraudulent business practices, responding to consumer complaints about business practices, assisting consumers in resolving disputes with businesses through informal mediation, and conducting outreach to educate the public about consumer topics. Consumers located outside the County may contact the Unit regarding a business based in the County, and County residents may contact the Unit regarding a business providing local services which is headquartered outside of the County. Consequently, both the consumers and businesses this unit engages with are located across the country.

The Consumer Protection Unit has two divisions which conduct this work: Enforcement and Mediation Services. The work and responsibilities of these units are summarized below.

Enforcement

The Enforcement Division of the Consumer Protection Unit is responsible for reviewing and evaluating complaints referred by the Mediation Services Division and other state and local regulatory and law enforcement agencies in addition to investigating and prosecuting civil litigation for enforcement action in the broader public interest. The deputy district attorneys in the Division determine whether to request an investigation by the District Attorney's Bureau of Investigations, and then whether to prosecute the individual or business entity for unlawful business practices, and whether they be criminal or civil cases if prosecuted. These cases are not prosecuted on behalf of an individual consumer but on behalf of the People of the State of California.

Criminal Cases

Consumer Protection criminal cases frequently involve licenses and are usually investigated by the specialist licensing board and then referred to the District Attorney's Consumer Protection Enforcement Division (see Figure I.3 on page 9 for referral sources). Common examples of licensing cases include practicing medicine or dentistry without a license. Other unlawful practices which may be prosecuted by Consumer Protection include certain types of fraud, such as contractor fraud (e.g., receiving payment for work but not completing the work) and odometer fraud (e.g., selling a car with the odometer rolled back). There are a large variety of other practices which may be prosecuted by Consumer Protection Enforcement as a criminal case beyond these few examples.

Over the past five years the Enforcement Division of the Consumer Protection Unit received 261 referrals, according to CiberLaw data provided to the Management Audit Division by the District Attorney's Office (see Figure I.3 on page 9). See Section 1, starting on page 15 (Tracking Performance and Workload) for further discussion of Enforcement caseloads. Criminal case referrals are received from a range of agencies, but the California Department of Consumer Affairs (DCA) is the most common source (see Figure I.3 on page 9). DCA referrals make up 63.6% (166 out of 261) of the total referrals received by the Enforcement Division over the past five years. Criminal case referrals to Enforcement have been decreasing since FY 2017-18. In FY 2021-22 the number of referrals was just over half of what they were in FY 2017-18.

**Figure I.3: Source of Referrals to Consumer Protection Unit's Enforcement Division
Between Fiscal Year 2017-18 and Fiscal Year 2021-22**

| Referral Source | Fiscal Year (FY) Case Opened in CiberLaw | | | | | Total |
|---|--|------------|------------|------------|------------|------------|
| | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 | |
| California Department of Consumer Affairs | 43 | 38 | 39 | 21 | 25 | 166 |
| California Department of Motor Vehicles | 1 | 7 | 7 | 14 | 8 | 37 |
| Santa Clara County Sheriff Office | 4 | 9 | 8 | 1 | 1 | 23 |
| DA Bureau of Investigation Santa Clara Co | 7 | 6 | 2 | 1 | | 16 |
| Santa Clara County Police Departments | 2 | 4 | 2 | 1 | | 9 |
| Bureau of Automotive Repair | 2 | 1 | | | | 3 |
| State Bar of California | | | 1 | | 1 | 2 |
| District Attorney's Office | 1 | | | | | 1 |
| Department of Industrial Relations | | | 1 | | | 1 |
| California Dept. of Food and Agriculture | | | 1 | | | 1 |
| California Department of Public Health | | 1 | | | | 1 |
| (Blank) | | 1 | | | | 1 |
| Total: | 60 | 67 | 61 | 38 | 35 | 261 |

Source: CiberLaw data provided to the Management Audit Division by the District Attorney's Office.

This decreasing trend in referrals to Enforcement reflects the decreasing trend of new cases reported by the DCA. The DCA reports that in FY 2017-18 they processed 130,397 new cases, but the annual number of new cases has decreased each year with only 108,013 in FY 2020-21 (a 17.2% decrease over four years).²

The Enforcement Division reviews case referrals, decides whether to pursue prosecution, and then assigns a District Attorney team depending on the nature of the unlawful behavior and how the District Attorney's Office has decided to prosecute it. According to CiberLaw data received from the Consumer Protection Unit, Enforcement has been assigned to at least 123 criminal cases over the past five fiscal years (53 are still active, 69 have been closed, and one was not prosecuted) (see Figure I.4 on page 10). There were 76 cases which did not have an assigned team indicated in CiberLaw and these cases were likely handled by a mix of attorneys from the Misdemeanor and Consumer Protection Enforcement Teams. See Section 1, starting on page 15 of this report for further discussion of the implications of not assigning cases in CiberLaw.

² The California Department of Consumer Affairs defines new Enforcement Cases as both "new Complaint Cases" and "Conviction/Arrest Cases." The DCA FY 2021-22 case counts are not yet available.
California Department of Consumer Affairs Annual Enforcement Statistics. Retrieved December 8, 2022, from <https://www.dca.ca.gov/data/enforcement.shtml>.

Figure I.4: Assigned District Attorney Team Between Fiscal Year 2017–18 and Fiscal Year 2021–22

| Assigned DA Team | Case Status | Fiscal Year (FY) Case Opened in CiberLaw | | | | | Total |
|--|--|--|------------|------------|------------|------------|------------|
| | | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 | |
| Consumer Protection Unit | Active | 7 | 11 | 13 | 11 | 11 | 53 |
| | Closed | 30 | 23 | 11 | 5 | | 69 |
| | Rejected | | 1 | | | | 1 |
| | Consumer Protection Unit Subtotal: | 37 | 35 | 24 | 16 | 11 | 123 |
| Assigned Team not Indicated in CiberLaw ⁽¹⁾ | Active | 2 | 1 | 2 | 4 | 10 | 19 |
| | Closed | 1 | 4 | 5 | 9 | 1 | 20 |
| | Under Review | | | | | 3 | 3 |
| | Rejected | 7 | 6 | 5 | 9 | 7 | 34 |
| | Assigned Team not Indicated in CiberLaw Subtotal: | 10 | 11 | 12 | 22 | 21 | 76 |
| Misdemeanor Team | Active | 1 | 3 | 12 | | 2 | 18 |
| | Closed | 11 | 17 | 13 | | 1 | 42 |
| | Misdemeanor Team Subtotal: | 12 | 20 | 25 | | 3 | 60 |
| Environmental Team & Dept. 34 | Closed | 1 | 1 | | | | 2 |
| Total: | | 60 | 67 | 61 | 38 | 35 | 261 |

Source: CiberLaw data provided to the Management Audit Division by the District Attorney's Office.

Note: (1) These cases were likely handled by the Misdemeanor Team or the Consumer Protection Unit.

The criminal cases assigned to the Consumer Protection Unit in CiberLaw, as shown in Figure I.4, have resulted in \$2,161,384 worth of restitution ordered by the Santa Clara County Superior Court between FY 2017–18 and FY 2021–22.³ Additionally, there were cases which were handled by the misdemeanor team, or did not have a team indicated in CiberLaw, which were excluded from this analysis; all consumer protection cases in the District Attorney's Office recovered a total of \$2,225,990 for victims between FY 2017–18 and FY 2021–22. Restitution for these cases is meant to cover the monetary damage/expense to the victim of the defendant's crimes. Restitution payment and distribution is processed by the County's Department of Tax and Collections.

³ In FY 2017–18 there was a single case with an unusually large restitution amount ordered by the Santa Clara Superior Court (\$1,203,182) without which the total restitution for the same five-year period would have been \$958,202.

Civil Cases

Consumer Protection civil cases involve business practices that violate state law. These cases often involve multiple counties' district attorney offices and the Attorney General's Office. Over the past five fiscal years the Consumer and Environmental Protection Units have closed 95 civil cases, acting as the lead office for 24 of these cases. According to Unit Management, 51 of these cases, or 53.7%, were consumer protection cases and 17 cases, or 17.9%, were Environmental Protection cases with consumer protection violations. Therefore, a total of 68 consumer protection civil cases closed in Fiscal Years 2017–18 through FY 2021–22. The Santa Clara County District Attorney's Consumer Protection unit was the lead or co-lead on 31 of the 68 civil cases, or 45.6% of cases. All 95 civil judgments resulted in a total of \$397,408 of restitution funds for victims to claim. When the District Attorney's Office is a part of a civil judgment, they often receive funds from the defendant to re-coup costs regardless of whether the Office was a lead/co-lead/signee. The Santa Clara County District Attorney's Office received almost \$11.9 million in monies from these civil cases from Fiscal Year 2017–18 through FY 2021–22.

Mediation Services

The Mediation Services Division responds to consumer complaints and conducts informal mediation to resolve disputes between consumers and business entities. Over the last five fiscal years (July 1, 2017, through June 30, 2022) Mediation Services has opened 1,304 mediation cases in CiberLaw (the information system used by the District Attorney's Office). Of those cases, 1,299 are now closed in the system (99.6%) (see Figure I.5 below).

Figure I.5: Mediation Complaint Status in CiberLaw Between Fiscal Year 2017–18 and Fiscal Year 2021–22

| Case Status | Count of Mediation Cases in CiberLaw by Fiscal Year (FY) | | | | | Grand Total |
|-----------------|--|------------------|------------------|------------|------------|-------------|
| | FY 2017–18 | FY 2018–19 | FY 2019–20 | FY 2020–21 | FY 2021–22 | |
| Active: | | 1 ⁽¹⁾ | 1 ⁽¹⁾ | | 3 | 5 |
| Closed: | 291 | 325 | 302 | 235 | 146 | 1,299 |
| Total: | 291 | 326 | 303 | 235 | 149 | 1,304 |
| % Cases Closed: | 100.00% | 99.69% | 99.67% | 100.00% | 97.99% | 99.62% |

Source: CiberLaw data provided to the Management Audit Division by the District Attorney's Office.

Note: (1) Although these complaints were reflected as active cases in CiberLaw, the CPU indicated that these complaints were closed and referred to enforcement in FY 2020–21.

Most mediations conducted by Mediation Services result in an agreement between the consumer and the business entity (67.4% in the most recent fiscal year) (see Figure I.6 on page 12). These agreements most frequently involve a monetary compensation to the consumer. Less than half the time (29.9% in the most recent fiscal year) an agreement between the business entity and the consumer cannot be reached. Occasionally complaints received by Mediation Services are referred to another agency or to the Enforcement Division of the Consumer Protection Unit for investigation and possible litigation. Mediation Services staff report that their current practice is to immediately refer complaints which may become legal

cases to Enforcement without opening a mediation case in the CyberLaw system. Consequently, the total number of complaints handled by Mediation Services, including complaints they refer, are no longer accurately captured in the Mediation Services data out of CyberLaw (see Figure I.3 on page 9 for cases received by Enforcement from Mediation Services). See Section 1, starting on page 15 of this report for further discussion of the implications for the District Attorney's Office.

Figure I.6: Mediation Complaint Outcomes for Closed Complaints in CyberLaw Between Fiscal Year 2017-18 and Fiscal Year 2021-22

| Case Outcome | Count of Closed Mediation Cases by Reason and Fiscal Year (FY) | | | | | | | | | |
|---|--|-----------------|------------|-----------------|------------|-----------------|------------|-----------------|------------|-----------------|
| | FY 2017-18 | % of FY 2017-18 | FY 2018-19 | % of FY 2018-19 | FY 2019-20 | % of FY 2019-20 | FY 2020-21 | % of FY 2020-21 | FY 2021-22 | % of FY 2021-22 |
| Agreement Reached | | | | | | | | | | |
| Agreement with monetary compensation | 113 | 38.83% | 107 | 32.82% | 109 | 35.97% | 138 | 58.72% | 84 | 57.14% |
| Non-monetary agreement | 32 | 11.00% | 49 | 15.03% | 31 | 10.23% | 9 | 3.83% | 15 | 10.20% |
| Agreement Subtotal: | 145 | 49.83% | 156 | 47.85% | 140 | 46.20% | 147 | 62.55% | 99 | 67.35% |
| No Agreement Subtotal: | 107 | 36.77% | 134 | 41.10% | 140 | 46.20% | 86 | 36.60% | 44 | 29.93% |
| Case Referred | | | | | | | | | | |
| Referred to another agency | 22 | 7.56% | 11 | 3.37% | 8 | 2.64% | | 0.00% | | 0.00% |
| Referred to Enforcement | 6 | 2.06% | 5 | 1.53% | 4 | 1.32% | | 0.00% | | 0.00% |
| Case Referred Subtotal: | 28 | 9.62% | 16 | 4.91% | 12 | 3.96% | - | 0.00% | - | 0.00% |
| Other | | | | | | | | | | |
| Complainant withdrew or failed to respond | 10 | 3.44% | 13 | 4.00% | 5 | 1.66% | 2 | 0.85% | 2 | 1.37% |
| Complaint for information only | 1 | 0.34% | 6 | 1.85% | 5 | 1.66% | | 0.00% | 1 | 0.68% |
| No Outcome Recorded | | 0.00% | 1 | 0.31% | 1 | 0.33% | | 0.00% | 1 | 0.68% |
| Other Subtotal: | 11 | 3.78% | 20 | 6.13% | 11 | 3.63% | 2 | 0.85% | 4 | 2.72% |
| Total Closed Cases: | 291 | | 326 | | 303 | | 235 | | 147 | |

Source: CyberLaw data provided to the Management Audit Division by the District Attorney's Office.

The Consumer Mediation Team has helped recover \$1.48 million from 552 consumer complaints from Fiscal Year (FY) 2017-18 through FY 2021-22 (see Figure I.7 on page 13).

Figure I.7: Funds Recovered from Mediation Cases Between Fiscal Year 2017–18 and Fiscal Year 2021–22

| | Amount Recovered by Fiscal Year (FY) | | | | |
|---|--------------------------------------|--------------|--------------|---------------------|-----------------------|
| | FY 2017–18 | FY 2018–19 | FY 2019–20 | FY 2020–21 | FY 2021–22 |
| Agreement with monetary compensation | \$247,861.35 | \$477,356.57 | \$164,484.00 | \$444,019.48 | \$130,876.59 |
| No agreement(1) | \$9,945.74 | | \$815.00 | | |
| Total: | \$257,807.09 | \$477,356.57 | \$165,299.00 | \$444,019.48 | \$130,876.59 |
| | | | | Grand Total: | \$1,475,358.73 |

Source: CiberLaw data provided to the Management Audit Division by the District Attorney's Office.

Note: (1) These are two cases for which no agreement was reached but a monetary value was recovered, one in FY 2017–18 and one in FY 2019–20.

Although the annual number of mediation complaints has been decreasing since FY 2018–19 (when the Division received 326 complaints), this is consistent with trends seen by the District Attorney's Consumer Protection Unit Enforcement Division as well as the California Department of Consumer Affairs (see discussion of Enforcement above).

Mediation Services is also responsible for providing the educational outreach for the Consumer Protection Unit. Presentations are prepared and given by the Consumer Protection Coordinator. From FY 2017–18 through FY 2019–20, Mediation Services held 64 public outreach events. No public outreach events were held during FY 2020–21 due to the COVID-19 pandemic. Mediation Services held their most recent outreach event on September 23, 2022, which staff from the Management Audit Division attended. Public presentations cover common scams, ways to avoid fraud and data phishing, and include a brief description of Mediation Services. See Attachment B on page 41 for the presentation given on September 23, 2022. The goal of public presentations is to reduce victims of fraud by providing the public with information about predatory practices and possible next steps with Mediation Services if they have a complaint about a business. See Section 2, starting on page 21 of this report for further discussion of the educational outreach provided by Mediation Services.

RECOMMENDATION PRIORITIES

The priority rankings shown for each recommendation in the audit report are consistent with the audit recommendation priority structure adopted by the Finance and Government Operations Committee of the Board of Supervisors, as follows:

Priority 1: Recommendations that address issues of non-compliance with federal, State and local laws, regulations, ordinances and the County Charter; would result in increases or decreases in expenditures or revenues of \$250,000 or more; or suggest significant changes in federal, State or local policy through amendments to existing laws, regulations and policies.

Priority 2: Recommendations that would result in increases or decreases in expenditures or revenues of less than \$250,000; advocate changes in local policy through amendments to existing County ordinances and policies and procedures; or would revise existing departmental or program policies and procedures for improved service delivery, increased operational efficiency, or greater program effectiveness.

Priority 3: Recommendations that address program-related policies and procedures that would not have a significant impact on revenues and expenditures, but would result in modest improvements in service delivery and operating efficiency.

DEPARTMENT ACCOMPLISHMENTS

Audits typically focus on opportunities for improvements within an organization, program, or function. To provide additional insight into the Consumer Protection Unit, we requested that management provide some of its noteworthy achievements. These are highlighted as Attachment C on page 53 of this report.

ACKNOWLEDGMENTS

We would like to thank the management and staff of the District Attorney's Consumer Protection Unit for their assistance and cooperation with this audit. In addition, we are grateful to the Office of Mediation and Ombuds Services for their time and feedback during this audit.

Section 1: Tracking Performance and Workload

Background

The Government Finance Officers Association recommends that all government organizations identify, track, and communicate performance measures to monitor service delivery, program outcomes, and community conditions. The performance of prosecutors has traditionally been assessed based on conviction rates and sentence length, which some associate with harmful consequences to community members. New performance metrics are increasingly being adopted by prosecutors and enforcement agencies, including the California Department of Consumer Affairs, committed to enhancing transparency and accountability based on data and evidence. Best practice performance metrics for prosecutors and enforcement agencies focus on capacity and efficiency, community safety and well-being, and fairness and justice. Metrics can be tracked over time to help inform the District Attorney's Office (DAO) decision making and policy development.

Problem, Cause, and Adverse Effect

The DAO does not formally track performance metrics for the Consumer Protection Unit ("the Unit"). Further, the Unit does not consistently use the internal case management system (CiberLaw) to track civil consumer complaints as they develop into investigations or cases. According to Unit management, CiberLaw was designed to handle criminal case types and is not well-suited for consumer protection civil cases. The Unit, therefore, does not record investigations of complaints and does not consistently record active civil case information or staff assignments in the system, instead they keep file folders in their shared drive. The Unit requires attorneys to maintain their own active case lists and provide that information to the Supervising Deputy District Attorney on a monthly basis. Though the case lists may be a useful tool for the attorneys and the managers, the lack of uniform data within CiberLaw limits the office's ability to track and report office-wide performance metrics.

Recommendations

The Unit should develop performance metrics for the Consumer Protection Unit which will help track the unit's efficiency, efficacy and capacity, as well as its fairness and justice, handling consumer complaints, investigations, and prosecution. Additionally, the Unit should develop reports in CiberLaw to monitor accuracy of case data such as: staff/team assignments, the open/closed status, closure reasons, and file locations (when applicable) for all complaints, investigations, and cases.

Savings, Benefits, and Costs

These changes will help inform the Department's staffing decision making and policy development. These recommendations should not require a significant amount of existing staff time or position authority.

FINDING

Background

The Government Finance Officers Association recommends that all government organizations identify, track, and communicate performance measures to monitor service delivery, program outcomes, and community conditions. The performance of prosecutors has traditionally been assessed based on conviction rates and sentence length, which some associate with harmful consequences to community members. New performance metrics are increasingly being adopted by prosecutors and enforcement agencies, including the California Department of Consumer Affairs, committed to enhancing transparency and accountability based on data and evidence. Best practice metrics focus on caseload and efficiency, community safety and well-being, and fairness and justice. Metrics can be tracked over time to help inform department decision making such as staffing assignments or requests and policy development.

The District Attorney's Office (DAO) has used CiberLaw as their customized internal case management system since 2005. The case management system was initially used as a companion to paper files, but the office began shifting to paperless files in 2017 and now manages paperless cases. CiberLaw contains case details and notes, digital police reports, court dates, and links to Web Extender, the DAO's document storage system. It also contains file location information for cases which were originally opened as paper files. According to Consumer Protection Unit management, CiberLaw was designed to handle criminal case types and is not well-suited for consumer protection civil cases. The Unit, therefore, does not record investigations of complaints and does not consistently record active civil case information or staff assignments in the system, instead they keep file folders in their shared drive.

Measuring Consumer Protection Unit Performance

The California Department of Consumer Affairs, the State agency⁴ responsible for protecting and serving consumers, reports several performance metrics for consumer protection, including: total complaints; total convictions from complaints; number of investigations; average number of days to complete complaint intake; time to close complaints based on if formal discipline was pursued; average cost of intake and investigation of complaints; and consumer satisfaction with services. Similarly, the San Francisco District Attorney posts dashboards on several measures of criminal prosecution, including one dashboard that tracks victims of identity theft/fraud served by the Victim Services Division. Further, the San Francisco Mayor's proposed budget includes several department-wide performance metrics for the District Attorney, including average pending caseload by assistant district attorney (one measure for general felonies and another for misdemeanors).

4 Among other responsibilities, the Department of Consumer Affairs educates consumers to help them avoid being victimized by unscrupulous, unlicensed, or unqualified people who promote deceptive or unsafe services; licenses more than 3.4 million professionals and enables consumers to check the license status of these professionals online or by phone; and investigates consumer complaints on issues under its jurisdiction, which can lead to discipline including probation, suspension or revocation of a license, fines and citations, letters of reprimand, cease and desist orders, or criminal charges.

The Consumer Protection Unit (“the Unit”) does not formally track and report performance metrics. Unit management provided Mediation Services statistics to our audit team upon request, including total mediation complaints received, closed complaints, the outcome, and total calls not related to an ongoing mediation case, but these statistics are not formally tracked or made public. Although the DAO reports crime statistics as well as data on race and prosecutions on their publicly available webpage, the Department could better show the public that it is fulfilling its responsibilities to protect consumers if staff were to monitor and report performance measures for the Unit.

The Unit should adopt the performance metrics which will help track the unit’s efficiency at managing consumer complaints, investigations, and prosecution. The Unit should minimally consider tracking and reporting the following metrics: (a) number of mediation complaints received; (b) average number of days to close mediation complaints (by result); (c) number of community outreach events; (d) number of Consumer Protection Enforcement complaints investigated; (e) average number of days to investigate a Consumer Protection complaint; (f) number of Consumer Protection civil cases; (g) average pending civil caseload by attorney; (h) average number of days to close Consumer Protection civil case; (i) number of Consumer Protection criminal cases; (j) average pending criminal caseload by attorney; (k) average number of days to close Consumer Protection criminal cases; (l) victim race/ethnicity for criminal cases; and (m) defendant race/ethnicity for criminal cases.

Use of CiberLaw

The Consumer Protection Unit receives emails and calls from the public which are tracked by the Mediation Services team and only opened in CiberLaw if the caller seeks mediation services. Mediation Services staff forward complaints which they believe may warrant civil or criminal filings to the Enforcement Division. However, the Unit does not have a formal tracking system in place for complaints that are sent to the Enforcement Division to resolve. The Consumer Protection Unit uses CiberLaw to keep records for criminal cases and mediation cases, but not civil cases or complaints referred from Mediation Services to Enforcement.

Further, Mediation Services staff report that their current practice is to immediately refer complaints which may become legal cases to the Enforcement Division without opening a mediation case in the CiberLaw system when possible. Consequently, the total number of cases handled by Mediation Services, including cases they refer, are not accurately captured in CiberLaw. Enforcement Division data in CiberLaw underrepresents the workload of the Unit, because the Unit does not input every complaint received or investigation opened into CiberLaw.

Consumer Protection Unit management reports that not all ongoing civil investigations are entered into the system. Oftentimes, an attorney may decide to open the case in CiberLaw once they file the civil case with the Court; this occurs after a complaint is received and investigated, and correspondence with the business has commenced. Unit management stated to our audit team that the total count of civil Consumer Protection cases is therefore not reflected in CiberLaw. Management also stated that providing the Management Audit Division with full counts for the audit scope period would require a full review of all attorney case lists, which the Unit began using in 2021, and would be cumbersome for staff.

Unit attorneys who work on civil and criminal cases keep case lists to track cases they are actively working on. The attorneys have provided their case lists to the Supervising Deputy District Attorney on a monthly basis since 2021. Although the case lists may be a useful tool for the attorneys and the managers, the lack of uniform data of all cases assigned within the Unit limits the office's ability to track and report office-wide performance metrics, such as caseload per attorney. According to Unit management, CiberLaw was designed to handle criminal cases and is not well-suited for consumer protection civil or mediation cases. The Unit, therefore, does not record investigations of complaints and does not consistently record active civil case information or staff assignments in the system.

Consumer Protection Cases Not Consistently Assigned Within CiberLaw

The Consumer Protection Unit is not consistently assigning criminal cases to attorney teams within CiberLaw. Instead, the Supervising District Attorney for the Unit evaluates attorney capacity using the monthly case lists provided by attorneys and assigns cases based on attorney availability. If a Consumer Protection case is filed as a misdemeanor, it gets assigned to attorneys on the misdemeanor team and is no longer a Consumer Protection case. In CiberLaw, roughly 44% of cases (active and closed) during the past two fiscal years have not been assigned to an attorney team in CiberLaw (see Figure 1.1 below).

Figure 1.1: CiberLaw Criminal Case Counts by Assigned Attorney Team FY 2017-18 through FY 2021-22

| Assigned DA Team | Case Status | Fiscal Year (FY) Case Opened in CiberLaw | | | | |
|--------------------------------|---|--|--------------|---------------|---------------|---------------|
| | | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 |
| Consumer Protection Unit | Active | 7 | 11 | 13 | 11 | 11 |
| | Closed | 30 | 23 | 11 | 5 | |
| | Consumer Protection Unit Subtotal: | 37 | 34 | 24 | 16 | 11 |
| Misdemeanor Team | Active | 1 | 3 | 12 | | 2 |
| | Closed | 11 | 17 | 13 | | 1 |
| | Misdemeanor Team Subtotal: | 12 | 20 | 25 | 0 | 3 |
| Environmental Team & Dept. 34 | Closed: | 1 | 1 | | | |
| Team Not Indicated In CiberLaw | Active | 2 | 1 | 2 | 4 | 10 |
| | Closed | 1 | 4 | 5 | 9 | 1 |
| | Team Not Indicated In CiberLaw Subtotal: | 3 | 5 | 7 | 13 | 11 |
| | | 5.66% | 8.33% | 12.50% | 44.83% | 44.00% |
| | Total: | 53 | 60 | 56 | 29 | 25 |

Source: CiberLaw data provided to the Management Audit Division by the District Attorney's Office.

The District Attorney's Office may not have the correct information available when assessing workload across the office and ensuring that deputy district attorneys are maintaining reasonable caseloads because caseload is not tracked within CiberLaw consistently with officewide caseload in the DAO. Therefore, Unit Management is

unable to confirm if all cases assigned are accounted for in attorney workload case lists because of incomplete CiberLaw data. Management has been working to remind staff to input the assigned attorney team in CiberLaw. The Unit should develop reports in CiberLaw to monitor accuracy for staff/team assignments, the open/closed status, closure reasons, and file locations (when applicable) for criminal cases in order to confirm attorney case lists are accurate and up to date.

CONCLUSION

The Consumer Protection Unit does not formally track performance metrics for the Unit. Further, the Unit does not consistently use the internal case management system (CiberLaw) to track consumer complaints as they develop into investigations or cases. The Consumer Protection Unit does not accurately track caseload or case referrals in CiberLaw, which makes it difficult to verify staff case lists and referral counts between divisions of the Unit, such as Mediation Services and Enforcement. CiberLaw was not built for civil cases or civil complaints. The Department could better track performance metrics to show the public that it is fulfilling its responsibilities to protect consumers if staff were to track case data more consistently.

RECOMMENDATIONS

The District Attorney's Office's Consumer Protection Unit should:

- 1.1 Develop and adopt performance metrics for the Consumer Protection Unit to track the unit's efficiency at managing consumer complaints, investigations, and prosecution as well as outreach efforts. (Priority 2) These metrics should measure activity at least annually. The metrics that should minimally be considered for implementation include:
 - a. Number of mediation complaints received;
 - b. Average number of days to close mediation complaints (by result);
 - c. Number of community outreach events held annually;
 - d. Number of Consumer Protection Enforcement complaints investigated;
 - e. Average number of days to investigate a Consumer Protection complaint;
 - f. Number of Consumer Protection civil cases;
 - g. Average pending civil caseload by attorney;
 - h. Average number of days to close Consumer Protection civil cases;
 - i. Number of Consumer Protection criminal cases;
 - j. Average pending criminal caseload by attorney;
 - k. Average number of days to close Consumer Protection criminal cases;
 - l. Victim race/ethnicity for criminal cases; and
 - m. Defendant race/ethnicity for criminal cases.
- 1.2 Develop reports in CiberLaw to monitor accuracy of staff/team assignments, the open/closed status, closure reasons, and file locations (when applicable) for criminal cases in order to confirm attorney case lists are accurate and up to date. (Priority 2)

SAVINGS, BENEFITS, AND COSTS

These changes would enable the Unit to track the complaint and investigation portion of cases and increase the transparency and accountability of the DAO based on data and evidence. Doing so will help inform the Department's decision making and policy development. These recommendations should not require a significant amount of existing staff time or position authority.

Section 2: Public Outreach

Background

The Consumer Protection Unit's ("the Unit") Mediation Services team ("Mediation Services" or "the Team") responds to consumer complaints and conducts informal mediation to resolve disputes between consumers and business entities (see Introduction for additional background). Mediation Services is also responsible for providing the educational outreach for the Unit. Generally, mediation and outreach programs are meant to reduce the number of cases brought to the courts and to protect consumer interests. This is done by teaching residents about services available to consumers at the District Attorney's Office (DAO) and the risks and red flags of falling victim to fraud, scams, and unlicensed business practices. Mediation Services is staffed by the Consumer Protection Coordinator, an Office specialist, and a Consumer Mediator position.

Problem, Cause, and Adverse Effect

Although Mediation Services conducted 64 public outreach presentations in the three years from FY 2017-18 through FY 2019-20, the Team conducted no outreach events in FY 2020-21 or FY 2021-22. Mediation Services had their most recent outreach event on September 23, 2022, which was the first such event since March 12, 2020. While DAO staff have stated that the decrease in outreach was due to the COVID-19 pandemic, the Department has not innovated to provide online presentations or otherwise alter the outreach program due to the public health emergency. While the Consumer Mediator position was vacant, it may have impacted the Consumer Protection Coordinator's ability to focus on outreach. Further, the Unit does not reach out to communities or work with community partners or other County departments meeting with the public to increase outreach. Rather, the Unit responds to members of the community who reach out to the Department for education on services and scams. This may be due to turnover and/or a lack of policies surrounding outreach. There are likely many missed opportunities to further educate the public regarding consumer fraud and scams due to the lack of outreach. The outreach presentation itself does not specify the types of complaints Unit takes and does not explain the role of the enforcement side of the unit. Therefore, the public may not be aware or fully informed of the services available or the warning signs of consumer protection issues.

Recommendations

The Consumer Protection Unit should partner with community groups and County departments to conduct proactive outreach to the public. The Unit should also improve the outreach presentation to include consumer complaint examples and examples of what can be reported as a criminal offense to Enforcement staff. The Unit should include outreach and mediation procedures in the Department's policy and procedure manual.

Savings, Benefits, and Costs

Mediation Services has helped recover \$1.48 million for 552 consumer complaints, 42.4 percent of all closed complaints (1,302), from FY 2017-18 through FY 2021-22, which is an average of \$2,700 per complaint where funds were recovered or an average of \$1,134 per total closed complaint during that time. If additional outreach is able to increase the number of cases where funds were recovered for the public by five percent, the Team could potentially help recover approximately \$74,000 in additional funds for the public and potentially help reduce the number of victims of scams and fraud. The recommendations would not require a significant amount of time of existing staff or require additional position authority.

FINDING

Background

The Consumer Protection Unit's ("the Unit") Mediation Services Team ("Mediation Services" or "the Team") responds to consumer complaints and conducts informal mediation to resolve disputes between consumers and business entities (see the Introduction of this report for additional background). Mediation Services is also responsible for providing the educational outreach for the Consumer Protection Unit. Generally, mediation and outreach programs are meant to reduce the number of cases brought to the courts and to protect consumer interests. This is done by teaching residents about services available to consumers at the District Attorney's Office (DAO) and the risks and red flags of falling victim to fraud, scams, and unlicensed business practices. Mediation Services is staffed by the Consumer Protection Coordinator, an Office specialist, and a Consumer Mediator position. Mediation Services has helped recover \$1.48 million for 552 consumer complaints, 42.4 percent of all closed complaints (1,302), from FY 2017–18 through FY 2021–22, an average of \$2,674 per complaint where funds were recovered, or \$1,134 of total closed complaints (see Figure 2.1 below).

Figure 2.1: Cases by Type, Year Received and Total Amount Recovered

| Closing Reason | FY 2017-18 | FY 2018-19 | FY 2019-20 | FY 2020-21 | FY 2021-22 | Grand Total | Percent of Total |
|-------------------------------------|------------------|------------------|------------------|------------------|------------------|--------------------|------------------|
| Cases with Funds Recovered | 113 | 106 | 110 | 138 | 85 | 552 | 42.4% |
| No Agreement & No Funds Recovered | 106 | 134 | 139 | 86 | 44 | 509 | 39.1% |
| Non-monetary Agreement | 32 | 49 | 31 | 9 | 15 | 136 | 10.4% |
| Referred to Agency/ Enforcement | 28 | 16 | 12 | 0 | 0 | 56 | 4.3% |
| Complainant withdrew/didn't respond | 10 | 13 | 5 | 2 | 2 | 32 | 2.5% |
| Complaint for Information | 1 | 6 | 5 | | 1 | 13 | 1.0% |
| No Reason Given | | 1 | 1 | | 2 | 4 | 0.3% |
| Total Cases Closed | 290 | 325 | 303 | 235 | 149 | 1302 | 100% |
| Total Recovered | \$258,387 | \$477,357 | \$165,299 | \$444,019 | \$130,891 | \$1,475,953 | |

Source: Analysis of CiberLaw Data pull of closed consumer complaints for FY 2017–18 through FY 2021–22.

Outreach Frequency and Approach

Although Mediation Services conducted 64 presentations on scams and consumer protection services offered by the Unit in the three years from FY 2017–18 through FY 2019–20, the Team conducted no outreach events in FY 2020–21 or FY 2021–22. Mediation Services had their most recent outreach event on September 23, 2022, which was the first such event since March 12, 2020. While Department staff have stated that the decrease in outreach was due to the COVID-19 pandemic, the Department has not innovated to provide online presentations or otherwise altered its outreach program to continue at or near the pre-pandemic level of outreach to the community.

The Unit does not initiate contact with communities or work with community partners or other County departments meeting with the public to increase outreach. Rather, the Unit responds to members of the community who reach out to the Department for education on services and scams. Upon request, Mediation Services will present information about avoiding scams, being a careful consumer, and letting people know about the mediation program itself. While the Consumer Mediator position was vacant, it may have impacted the Consumer Protection Coordinator's ability to focus on outreach (see Section 3, starting on page 27 of this report on Mediation Services for additional information and analysis). The lack of proactive outreach by Mediation Services may be due to turnover, lack of staff time, and/or lack of an intentional effort or policy regarding outreach.

The Office of Mediation and Ombuds Services (OMOS)⁵ has 10 mediators and conducted 16 presentations and outreach events during FY 2020–21. Additionally, OMOS tracks the consistency of their meetings with County departments and community groups to help inform them of presentation opportunities and services provided to the public. Further, the OMOS webpage includes video presentations in English and Spanish covering their mediation services. The OMOS mediates public complaints regarding many issues to reduce the number of cases being brought to court, including consumer complaints and landlord-tenant disputes, whereas the DAO cannot mediate anything other than consumer complaints.

From FY 2017–18 through FY 2019–20, the Consumer Protection Unit's Mediation Services conducted 64 outreach presentations. Mediation Services gave presentations to 17 community organizations. Additionally, 26 of their presentations, or 40.6 percent, were given at senior living homes or senior community centers. Mediation Services attended four community events by setting up information tables. Unit staff have stated that seniors are more likely to fall victim to the types of scams or risks of fraud which Mediation Services provides information on and more often provide Mediation Services with complaints. However, this may be an inverse relationship because the Unit provides more outreach to senior communities; therefore, it is also important to engage people of all age groups of the services provided by the Mediation Team and ways to avoid fraud and scams.

Therefore, the Unit should partner with community groups and County departments to conduct proactive outreach to the public. The DAO should include outreach and mediation procedures in the Department's policy and procedure manual.

Information Provided During Outreach

As previously mentioned, Mediation Services can only mediate civil disputes between a consumer and business. However, the outreach presentation⁶ does not specify the types of complaints the Unit accepts and does not explain the role of the enforcement side of the Unit. The presentation states that the Unit mediates consumer transactions, which is when a good or service has been purchased for home or

⁵ The Santa Clara County Office of Mediation and Ombuds Service (OMOS) provides mediation and conflict resolution services for Santa Clara County employees, departments, agencies, communities, and residents.

⁶ As presented on September 23, 2022, to Terrace Gardens' Senior Apartments and observed by a member of our audit team.

personal use but does not elaborate on any examples of consumer complaints which they have mediated to help the audience better understand the services provided (see Attachment B on page 41 for the full Public Outreach Presentation from September 23, 2022).

Further, the presentation does not provide information on what the public could report to the Unit for enforcement. The Unit litigates civil and criminal cases covering operating without a license and unclear terms regarding automatic renewals for services. These complaints can be an invaluable source of information for the DAO to launch potential civil or criminal investigations.

The public may not be aware or fully informed of the services available or the warning signs of consumer protection issues beyond scams and fraud due to the lack of enforcement or mediation examples in the outreach presentation. The Consumer Protection Unit should update the consumer outreach presentation to include consumer complaint examples and examples of what can be reported as a criminal offense to enforcement staff. The Unit should also create training videos for the public on services provided by Mediation Services and common scams to post on the Consumer Protection Unit webpage.

CONCLUSION

Although Mediation Services conducted 64 public outreach presentations in the three years from FY 2017–18 through FY 2019–20, the Team conducted no outreach events in FY 2020–21 or FY 2021–22. Mediation Services had their most recent outreach event on September 23, 2022, which was the first such event since March 12, 2020. While Department staff have stated that the decrease in outreach was due to the COVID-19 pandemic, the Department has not innovated to provide online presentations or otherwise alter the outreach program due to the public health emergency. The Team's public outreach may have also been impacted by the vacancy of the Consumer Mediator position.

The Unit does not proactively initiate contact with communities or work with community partners or other County departments meeting with the public to increase outreach. Rather, the Unit responds to members of the community who reach out to the Department for education on services and scams. The lack of proactive outreach by Mediation Services may be due to turnover, lack of staff time, and/or lack of an intentional effort or policy regarding outreach.

The outreach presentation, as observed by a member of our audit team, does not specify the types of complaints the Unit takes and does not explain the role of the enforcement side of the unit. The presentation states that the Unit mediates consumer transactions, but does not elaborate on any examples of consumer complaints which they have mediated to help the audience better understand the services provided.

RECOMMENDATIONS

The Santa Clara County Consumer Protection Unit should:

- 2.1 Include outreach and mediation procedures in the District Attorney's policy and procedure manual. (Priority 3)
- 2.2 Partner with community groups and County Departments, including those that provide mediation services, to conduct proactive outreach to the public. (Priority 2)
- 2.3 Update the consumer outreach presentation to include consumer complaint examples and examples of what can be reported as a criminal offense to enforcement staff. (Priority 2)
- 2.4 Create training videos for the public on services provided by Mediation Services and common scams to post on the Consumer Protection Unit webpage. (Priority 2)

SAVINGS, BENEFITS, AND COSTS

Mediation Services has helped recover \$1.48 million stemming from 552 consumer complaints, 42.4 percent of the 1,302 total closed complaints, from FY 2017–18 through FY 2021–22. These recoveries averaged about \$1,134 per complaint or about \$2,674 per complaint, that involved a recovery of funds. If additional outreach is able to increase the number of cases where funds were recovered for the public by five percent the team could help recover approximately \$74,000 in additional funds annually for the public and potentially help reduce the number of victims of scams and fraud. The recommendations would not require a significant amount of time of existing staff or additional position authority.

THIS PAGE LEFT BLANK

Section 3: Mediation Services

Background

Mediation Services, within the Consumer Protection Unit (“the Unit”), responds to consumer complaints, conducts informal mediation to resolve disputes between consumers and business entities, and conducts public outreach. County departments that provide mediation services to the public play a critical role in resolving disputes. When County departments coordinate mediation services, the County can provide services that are consistent, effective, and meet the needs of the public. Mediation Services is currently funded for three positions: the Consumer Protection Coordinator, a mediator, and an office specialist. The District Attorney’s Office (DAO) Policy manual outlines a streamlined and flexible hiring process stating that the DA will consider hiring into a vacant attorney code as soon as it becomes vacant to reduce the effect of caseload on other attorneys, rather than await the annual hiring process.

Problem, Cause, and Adverse Effect

The DAO’s Policy manual does not outline the hiring process for the Consumer Protection mediator. The Unit mediator position had been vacant since October 2021, was open for applicants from November 21, 2022, through December 22, 2022, and was filled in March 2023. Management has stated that they did not quickly fill the position due to a reorganization of the Unit and a reduction of work during the pandemic. The vacant mediator position had reduced the Coordinator’s capacity to focus on outreach; reducing opportunities for the public to be more aware of services provided by the Unit and potential consumer scams (see Section 2, starting on page 21, on Public Outreach Quality). Like the Consumer Protection Unit, the Office of Mediation and Ombuds Services (OMOS) mediates public complaints covering many legal topics, including consumer complaints and landlord-tenant disputes. However, the Unit does not have a formal system for coordination in place to refer applicable complaints to other departments which provide mediation services.

Recommendations

The Unit should update the Policy Manual to include steps for the hiring process for Consumer Mediators. The Consumer Protection Unit should work to identify volunteers from the community to train to help with mediation or outreach tasks. The Unit should work with County departments that provide mediation services to coordinate mediation service referrals to allow for a streamlined provision of services for the public.

Savings, Benefits, and Costs

Mediation Services has helped recover \$1.48 million for 552 consumer complaints from FY 2017–18 through FY 2021–22, which could be increased with more staff availability, increased public outreach, and by working with other county Departments that provide mediation services. These recommendations would not require a significant amount of time of existing staff or additional position authority.

FINDING

Background

The District Attorney's Office (DAO) provides Mediation Services, within the Consumer Protection Unit ("the Unit), which responds to consumer complaints and resolves disputes between consumers and business entities through informal mediation. Mediation is a quicker and more cost-effective way to resolve disputes compared to going through the court system. According to the Institute for Court Management, mediation provides litigants with the opportunity to reach an agreement on their own terms, by opening the door for communication. The Unit is currently funded for three Mediation Services positions: the Consumer Protection Coordinator, a mediator, and an office specialist. From FY 2017–18 through FY 2021–22 the mediation team received 1,304 cases and marked 1,299 cases as closed in the system, with an average of 22 new cases opened each month.

Consumer Mediation Caseload

The DAO Policy manual does not outline the hiring process for the Consumer Protection mediator. The mediator position had been vacant since October 2021, was open for applicants from November 21, 2022, through December 22, 2022, and was filled in March 2023. Management of the Consumer Protection Unit has stated that they did not quickly fill the position due to a reorganization of the unit and a reduction of work during the pandemic. Unit management further stated that they normally quickly follow the Employee Services Agency and Department Agreement for all non-attorney positions as soon as vacancies arise. The vacant mediator position had reduced the Coordinator's capacity to focus on outreach; reducing opportunities for the public to be more aware of services provided by the Unit and potential consumer scams (see Section 2, starting on page 21, on Public Outreach for further information and analysis). The Unit should update the Policy Manual to include steps for the hiring process for Consumer Mediators.

Volunteer Mediator Program

The volunteer program in Mediation Services was put on hold due to the COVID-19 pandemic. Prior to FY 2020–21, the Unit had a rotating group of volunteers who each assisted an average of 20 members of the public a year from FY 2017–18 through FY 2019–20. The Consumer Protection Unit should work to identify volunteers from the community to train to help with mediation or outreach tasks.

Countywide Mediation Efforts

County departments that provide mediation services to the public play a critical role in resolving disputes. However, for these departments to be more effective, it is essential that they work together to coordinate their services. When County departments coordinate mediation services, the County can provide services that are consistent, effective, and meet the needs of the public.

The Office of Mediation and Ombuds Services (OMOS) mediates public complaints covering many legal topics to reduce the number of cases being brought to civil court, including consumer complaints and landlord-tenant disputes, whereas the DAO cannot mediate anything other than consumer complaints.

The Unit's Mediation Services can only mediate consumer transactions. A consumer transaction is one in which a person buys a service or product for their own home or personal use from a person engaged in the business of selling consumer goods or services at retail establishments. In addition, they require that either the consumer or the business be in Santa Clara County. If the Unit's Mediation Services cannot help a member of the public with their complaint, staff will refer the person to other services which may be able to help them resolve their issue outside or within the court system.

For example, if the Unit receives a complaint about a landlord-tenant issue in the City of San Jose they will refer the complainant to the Bay Area Legal Aid and Rental Rights and Referrals. The responder would also refer the person to the Santa Clara County Bar Association and Lawyers in the Library Program for legal advice. Unit Management has stated that the Unit has also made referrals on landlord-tenant cases to Project Sentinel. Project Sentinel focuses almost exclusively on landlord-tenant disputes and is the Superior Court's designated provider for those disputes.

As previously mentioned, the OMOS will mediate landlord-tenant issues for any County resident. Therefore, the Unit should be referring the public to other county departments which provide mediation, when appropriate. The OMOS will mediate several types of cases for the public, including landlord-tenant disputes, adult custody organization, Victim-Offender Mediation, and parent-youth dialogues. The OMOS is also described as a court alternative to help resolve complex probate or guardianship cases and to help people find resolution in civil harassment or temporary restraining order matters. Therefore, the Consumer Protection Unit should work with County departments that provide mediation services to coordinate mediation service referrals to allow for a streamlined continuity of services for the public.

CONCLUSION

The mediator position had been vacant from October 2021 until March 2023. This had reduced the Consumer Coordinator's capacity to focus on outreach to the community. Further, the DAO has a policy in place to immediately fill vacant attorney positions but no policies outlining processes for Consumer Protection Mediation Services. In addition, the Consumer Coordinator should take time to identify and train volunteers to help mediate consumer complaints to reduce individual caseload. The Unit's Mediation Services Team could expand their coordination with other mediation agencies to refer complaints to inter-County functions which could provide services to cases the Unit is not equipped to mediate.

RECOMMENDATIONS

The Santa Clara County Consumer Protection Unit should:

- 3.1 Update the Policy Manual to include steps for the hiring process for Consumer Mediators. (Priority 3)
- 3.2 Recruit and train volunteers from the community to assist with mediation or outreach tasks. (Priority 3)
- 3.3 Identify and establish opportunities to work with other County departments that provide mediation services to coordinate mediation service referrals to allow for a streamlined continuity of services for the public. (Priority 2)

SAVINGS, BENEFITS, AND COSTS

Mediation Services has helped recover \$1.48 million for 552 consumer complaints from FY 2017–18 through FY 2021–22, which could be increased with more staff availability, increased public outreach, and by working with other county Departments that provide mediation services. These recommendations would not require a significant amount of time of existing staff or additional position authority.

THIS PAGE LEFT BLANK

**County of Santa Clara
Office of the District Attorney**

County Government Center, West Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-7400
www.santaclara-da.org



**Jeffrey F. Rosen
District Attorney**

DATE: August 10, 2023

TO: Management Audit Division of the Board of Supervisors

FROM: *JR* Jeff Rosen, District Attorney

RE: Response to Management Audit of the DA's Consumer Protection Unit

We reviewed the final audit report regarding the operations and management of the District Attorney's Office Consumer Protection Unit (CPU) over the five-year period of July 1, 2017, to June 30, 2022. We appreciate the Management Audit Division's collaborative approach to its work on this audit, and appreciate the report's inclusion of our information and perspectives.

The District Attorney's Office (DAO) submits the following response to your report and recommendations.

Background section (page 5 of the Executive Summary)

Although the budget numbers shown are technically accurate, they may lead to an inaccurate conclusion about the portion of the DAO budget represented by the Consumer Protection Fund. As indicated in the report, most of the budget for CPU is in reserves. This is due to a fund balance that has increased, pursuant to state law (Business and Professions Code section 17206), through years of CPU work in negotiating civil settlements in consumer protection cases.

The report mentions that the CPU represents 3% of the Office's FTEs. A budget percentage calculated only on budgets for expenditures (excluding reserves), would be even lower.

Enforcement Data for Civil Cases (pages 10-11 of the Executive Summary)

Two units in the DAO have statutory authority to file civil actions: CPU and the Environmental Protection Unit (EPU). The DAO obtained 95 civil judgments in CPU and EPU cases in the five fiscal years being reviewed. Some EPU cases have included consumer protection violations related to consumer privacy (17% of our EPU cases in this audit period). As a result of our work, the defendants in those cases were ordered to pay more than \$134,000,000, mostly in civil penalties (fines).

We were the lead attorneys or co-lead attorneys in 50 out of the 95 cases filed by CPU and EPU. Most CPU civil cases, and many EPU civil cases, are multi-jurisdictional in nature, involving misconduct in more than one county. These investigations and prosecutions are handled with other District Attorney's Offices and/or the California Attorney General's Office. A multi-jurisdictional case can be led by more than one office, even though the case is filed in a single county.

Further, we wish to clarify that most of the monetary relief obtained by prosecutors in our civil consumer and environmental cases was civil penalties, not cost recovery or restitution. The audit report states that the DAO "often receive[s] funds from the defendant to re-coup costs." This is not accurate. The DAO receives civil penalties in all cases, but only sometimes obtains cost recovery. Pursuant to state law, these civil penalties are ordered by the court to go to the agency that investigated and prosecuted the action. It would be more accurate to say that CPU negotiated settlements in 51 cases, in which the defendants were ordered to pay a total of more than \$65 million, mostly in civil penalties. The DAO received more than \$11.3 million in civil penalties from these CPU cases.

Section 1: Tracking Performance and Workload

The report concludes that CPU should spend more time *tracking* what it does, not merely achieving its goals of responding to consumer complaints, conducting investigations, and prosecuting consumer protection cases in civil and criminal court. The audit report recommends that CPU do more to track performance, track complaints, and track caseloads, and it includes a number of statements related to possible issues that might be addressed through more tracking. It is notable, however, that the audit does not point to specific cases where the Office's current tracking methods have resulted in negative impacts.

We believe this is because the current systems are working. We address the specific recommendations below, and agree that they offer ways to further improve the unit's services. But we emphasize here that the handling of all civil cases, criminal cases, and mediations have produced excellent results. The unit is meeting its objectives on behalf of County residents, and will continue to do so.

Recommendation 1.1: Develop and adopt performance metrics for the Consumer Protection Unit to track the unit's efficiency at managing consumer complaints, investigations, and prosecution as well as outreach efforts. (Priority 2) These metrics should measure activity at least annually. The metrics that should minimally be considered for implementation include:

- a. Number of mediation complaints received;
- b. Average number of days to close mediation complaints (by result);
- c. Number of community outreach events held annually;
- d. Number of Consumer Protection Enforcement complaints investigated;
- e. Average number of days to investigate a Consumer Protection complaint;
- f. Number of Consumer Protection civil cases;
- g. Average pending civil caseload by attorney;
- h. Average number of days to close Consumer Protection civil cases;
- i. Number of Consumer Protection criminal cases;
- j. Average pending criminal caseload by attorney;
- k. Average number of days to close Consumer Protection criminal cases;
- l. Victim race/ethnicity for criminal cases; and
- m. Defendant race/ethnicity for criminal cases.

DAO Response: Agree.

Some performance metrics can be an important tool in tracking efficiency and effectiveness, especially as it relates to Mediation Services, and we will consider implementing them.

One issue that we have raised during this audit is the difficulty, and possible validity, of measuring through data collection the performance of a prosecutor's office handling a variety of civil and criminal cases. The DAO is currently working with Prosecutorial Performance Indicators, an academically based organization that works with other prosecutor's offices throughout the country on metrics that fit our priorities. We believe these metrics will help us track performance in key areas, including consumer protection.

Achieving justice is our goal. Our work on metrics focuses on improving effectiveness, simplifying data collection to avoid an undue impact on staff time, and measuring results, not workload.

Recommendation 1.2: Develop reports in CiberLaw (CIBER) to monitor accuracy of staff/team assignments, the open/closed status, closure reasons, and file locations (when applicable) for criminal cases in order to confirm attorney case lists are accurate and up to date.

DAO Response: Agree

Data entry in CIBER is important since it is the DAO's internal criminal case management system. We acknowledge that the audit team pointed out there were criminal cases in which an "Assigned DA Team" was not chosen from the drop-down menu in CIBER. As the audit specifies, those cases were handled by attorneys on either the Misdemeanor team or CPU. No case was left unattended or adversely impacted, but we have taken steps to remind employees that, in every criminal case we file, they must select an assigned team in CIBER. We are also implementing a procedure in which staff will run a report in CIBER each month to identify cases in which the "Assigned DA Team" is not indicated (a report run in July 2023 found that 1-2% of all active cases in CIBER had no assigned team designated), and the Assigned DA for each of those cases will be notified by email to identify the team in CIBER.

Section 2: Public Outreach

The report notes (on pages 21 and 25 under "Savings, Benefits, and Costs") that the work of the DAO's Mediation Services Unit has resulted in \$1.48 million in funds returned to consumers. The report then veers into speculation: "If additional outreach is able to increase the number of cases where funds were recovered for the public by five percent, the Team could potentially help recover approximately \$74,000 in additional funds for the public and potentially help reduce the number of victims of scams and fraud."

The audit provides no basis for this assumption, and in fact, Figure 2.1 shows that, in FY 2020-21, a year in which no outreach presentations were made due to COVID restrictions, the amount recovered rose almost \$280,000 compared to the prior year and was higher than 2017-18 and 2019-20 combined. That would suggest that many factors affect the amount of funds recovered in any given year. Outreach is certainly

one of those factors, and we expect to do more outreach now that a second mediator is on staff.

We plan to increase outreach using our Mediation Services staff, but we will balance any increase in outreach against our need for staff to have enough time to accomplish the work of the office.

Recommendation 2.1: Include outreach and mediation procedures in the District Attorney's policy and procedure manual.

DAO Response: Partially Agree

We agree that there would be a benefit in developing and adopting formal policies and procedures related to consumer outreach and mediation services. However, the DAO Policy and Procedure Manual (PPM) is not an appropriate place to house those procedures. The DAO PPM is meant to be an overview of some of the most important principles that support the way our Office operates; it is not meant to be an exhaustive list of all procedures in the office. Procedures such as these are housed with individual teams and made accessible to those who use them as part of their work.

Recommendation 2.2: Partner with community groups and County Departments, including those that provide mediation services, to conduct proactive outreach to the public.

DAO Response: Agree

The filling of the Consumer Mediator position in March 2023 will allow the Unit to engage in more outreach. We agree that the Unit can be more proactive in finding outreach opportunities, rather than just responding to community requests, and we will take steps to engage people of all age groups.

Recommendation 2.3: Update the consumer outreach presentation to include consumer complaint examples and examples of what can be reported as a criminal offense to enforcement staff.

DAO Response: Agree

Recommendation 2.4: Create training videos for the public on services provided by Mediation Services and common scams to post on the Consumer Protection Unit webpage.

DAO Response: Agree

We have already begun work on this recommendation.

Section 3: Mediation Services

Recommendation 3.1: Update the Policy Manual to include steps for the hiring process for Consumer Mediators.

DAO Response: Disagree

The report refers to a portion of the DAO PPM that addresses hiring into an attorney code more quickly than the annual hiring process. The DAO typically conducts an annual hiring process for attorneys in order to follow the Bar exam and in recognition of the significant staff effort involved.

All other positions are hired as soon as vacancies occur, absent other factors that might cause a reason to delay. Those hiring processes are conducted according to the Merit System Rules and other applicable policies (for example, the labor-management agreement with SEIU allows a streamlined hiring process for clerical positions).

In the case of the Consumer Mediator position, as stated in the audit, management chose to delay hiring in order to reorganize the duties of the positions in the unit and to ensure that complaint volume would return to pre-pandemic levels. We submit that those constitute excellent reasons to delay filling a vacant position, and represent a prudent approach to spending public funds. We would proceed in the same fashion in similar circumstances.

For these reasons, we do not see value in adding language to the DAO PPM regarding hiring for the Consumer Mediator position.

Recommendation 3.2: Recruit and train volunteers from the community to assist with mediation or outreach tasks.

DAO Response: Agree

We intend to re-establish a volunteer program. The report concludes, under “Savings, Benefits, and Costs,” that this recommendation “would not require a significant amount of time of existing staff or additional positional authority.” We do not necessarily agree. Re-establishing and maintaining a volunteer program, including the training of volunteers on consumer protection issues and public outreach, requires a substantial amount of staff time. Training and supervising volunteers to handle a mediation caseload would require even more staff time.

Recommendation 3.3: Identify and establish opportunities to work with other County departments that provide mediation services to coordinate mediation service referrals to allow for a streamlined continuity of services for the public.

DAO Response: Agree

We were previously aware of OMOS’s ability to mediate matters that CPU does not, and we have made referrals to OMOS in the past. However, based on the audit recommendation, our mediators met with OMOS staff in May 2023 to improve coordination and better understand the services provided by each office to serve the public more effectively.

THIS PAGE LEFT BLANK

9/27/2022



1



2

1

WHO WE ARE

- **MEDIATION SERVICES**
 - STAFF
 - 1 DIRECTOR
 - 1 MEDIATOR - VACANT
 - 1 SR. OFFICE SPECIALIST
 - VOLUNTEERS
 - 2 TRAINED VOLUNTEERS
- **ENFORCEMENT**
 - STAFF
 - 4 ATTORNEYS
 - 1 PARALEGAL
 - 2 INVESTIGATOR




CONSUMER COMPLAINT

3

WHAT WE DO

- MEDIATE “**CONSUMER TRANSACTION**” DISPUTES
- WHAT IS A **CONSUMER TRANSACTION**?
 - A **CONSUMER TRANSACTION** IS ONE IN WHICH GOODS OR SERVICES ARE PURCHASED FOR **HOME** OR **PERSONAL USE**



Mediation
alternate resolution process

4

9/27/2022

WHAT WE DON'T DO

- LANDLORD TENANT DISPUTES
- BUSINESS TO BUSINESS TRANSACTIONS
- COMPLAINTS AGAINST OTHER GOVERNMENT AGENCIES
- COMPLAINTS THAT ARE ALREADY BEING LITIGATED

5

MEDIATION PROCESS

- COMPLAINT FILED ONLINE OR BY MAIL
- REVIEWED BY DIRECTOR
 - APPROVE = QUALIFIES FOR SERVICES
 - REJECT = DOES NOT QUALIFY FOR SERVICES
 - REFER = TO AGENCY SPECIALIZED IN TYPE OF COMPLAINT
- CASE NUMBER AND MEDIATOR ASSIGNED
- COPY OF COMPLAINT SENT TO BUSINESS
- MEDIATION PROCESS CONTINUES UNTIL...
 - CASE IS RESOLVED WITH MONETARY OR NONMONETARY AGREEMENT
 - CONSUMER AND BUSINESS CANNOT AGREE ON A RESOLUTION




6

3



7



COMMON RED FLAGS TO WATCH OUT FOR

RED FLAG #1: PERSON YOU ARE SPEAKING WITH CANNOT BE EASILY VERIFIED

RED FLAG #2: YOU ARE PRESSURED INTO MAKING A RUSHED DECISION

RED FLAG #3: SPECIFIC FORM OF PAYMENT IS REQUESTED

- WIRE TRANSFER
- PREPAID CARD
- BITCOIN

8

9/27/2022

TELEPHONE SCAMS

- IRS SCAM
- GRANDPARENT SCAM
- JURY DUTY SCAM
- LOTTERY SCAM
- UTILITY SCAM



9

WHO SHOULD YOU REPORT IT TO?

- LOCAL LAW ENFORCEMENT
 - SUFFERED A FINANCIAL LOSS OR PERSONAL/FINANCIAL INFORMATION WAS STOLEN
- FEDERAL TRADE COMMISSION (FTC)
 - VISIT [FTC.GOV](https://www.ftc.gov) OR CALL TOLL-FREE 1-877-FTC-HELP (1-877-382-4357)
 - REPORT FRAUD, SCAMS AND BAD BUSINESS PRACTICES
- STATE ATTORNEY GENERAL
 - VISIT [OAG.CA.GOV](https://oag.ca.gov) OR CALL TOLL-FREE 1-800-952-5225 OR PUBLIC INQUIRY UNIT AT 1-916-322-3360

10

ONLINE PURCHASES



- BEWARE OF SCAMMERS WHEN SHOPPING ONLINE
- SCAMMERS MAY ADVERTISE REALLY LOW PRICES USING A FAKE WEBSITE FULL OF STOLEN IMAGES, A FAKE AD ON A GENUINE RETAILER'S WEBSITE, OR THROUGH AN AUCTION SITE
- THEY WILL TAKE YOUR MONEY AND NEVER DELIVER ANY OF THE PRODUCTS, OR PERHAPS SEND YOU A CHEAP IMITATION INSTEAD

11

TIPS TO AVOID ONLINE SCAMS




- **BE SUSPICIOUS...**"IF THE PRICE IS TOO GOOD TO BE TRUE, IT PROBABLY IS"
- **GET THE DETAILS...**READ THE DESCRIPTION OF THE ITEM CLOSELY
- **RESEARCH THE COMPANY...**A QUICK INTERNET SEARCH OF THE COMPANY MAY HELP YOU FIGURE OUT WHETHER THE SELLER IS REAL
- **USE A CREDIT CARD...**THE LAW ALLOWS YOU TO DISPUTE CHARGES ON YOUR CREDIT CARD IF SOMETHING GOES WRONG

12

9/27/2022

TIPS TO AVOID ONLINE SCAMS


- **MAKE SURE YOU HAVE A SECURE CONNECTION...**BEFORE PROVIDING ANY PERSONAL OR FINANCIAL INFORMATION ONLINE, MAKE SURE THAT THE WEBSITE IS SECURE

 • **SECURE** | [HTTPS://WWW.SCCGOV.ORG](https://www.sccgov.org)

- **KEEP RECORDS AND CHECK YOUR CREDIT CARD STATEMENTS...**CHECK YOUR CREDIT CARD STATEMENTS TO PROTECT YOURSELF FROM ANY SURPRISE CHARGES

13

ROBOCALLS



14

TAKE-AWAYS

- MANY ROBOCALLS ATTEMPTING TO SELL YOU SOMETHING ARE SCAMS
- DON'T RESPOND IN ANY WAY:
 - DON'T PRESS BUTTON TO SPEAK TO A LIVE PERSON
 - DON'T PRESS BUTTON TO BE TAKEN OFF THE CALL LIST
 - BOTH OF THESE ACTIONS WILL LEAD TO MORE UNWANTED ROBOCALLS
- HANG UP
- REPORT IT TO THE FEDERAL TRADE COMMISSION (FTC)

15

IDENTITY THEFT



16

9/27/2022

WHAT IS IDENTITY THEFT

- IDENTITY THEFT IS WHEN SOMEONE USES YOUR PERSONAL DATA — YOUR NAME, SOCIAL SECURITY NUMBER, BIRTHDATE, ETC. — TO IMPERSONATE YOU, TYPICALLY USING THAT INFORMATION TO STEAL FROM YOU.
- IDENTITY THIEVES MAY DRAIN YOUR BANK AND INVESTMENT ACCOUNTS, OPEN NEW CREDIT LINES, GET UTILITY SERVICE, STEAL YOUR TAX REFUND, USE YOUR INSURANCE INFORMATION TO GET MEDICAL TREATMENTS, OR GIVE POLICE YOUR NAME AND ADDRESS WHEN THEY ARE ARRESTED.

17

TYPES OF I.D. THEFT & WARNING SIGNS

- CREDIT I.D. THEFT: CRIMINAL USES YOUR PERSONAL INFORMATION, SUCH AS BIRTHDATE AND SOCIAL SECURITY NUMBER, TO APPLY FOR A NEW CREDIT LINE.
 - **WARNING SIGN:** YOU MAY GET DEBT COLLECTION NOTICES OR A COURT JUDGMENT AGAINST YOU.
- TAX PAYER I.D. THEFT: FRAUDSTERS USE A SOCIAL SECURITY NUMBER TO FILE A TAX RETURN AND STEAL YOUR TAX REFUND OR TAX CREDIT.
 - **WARNING SIGN:** YOU GET AN IRS NOTICE OR LETTER REFERENCING SOME ACTIVITY YOU KNEW NOTHING ABOUT.

18

TYPES OF I.D. THEFT & WARNING SIGNS

- MEDICAL I.D. THEFT: USING SOMEONE ELSE'S IDENTITY TO GET HEALTH CARE SERVICES.
 - **WARNING SIGN:** CLAIMS OR PAYMENTS ON YOUR INSURANCE EXPLANATION OF BENEFITS THAT YOU DO NOT RECOGNIZE CAN SUGGEST THAT SOMEONE IS USING YOUR HEALTH CARE BENEFITS.
- ACCOUNT TAKEOVER: CRIMINALS USE PERSONAL DATA TO ACCESS YOUR FINANCIAL ACCOUNTS, THEN CHANGE PASSWORDS OR ADDRESSES SO THAT YOU NO LONGER HAVE ACCESS.
 - **WARNING SIGN:** AN EMAIL, LETTER OR TEXT FROM YOUR FINANCIAL INSTITUTION THAT REFERS TO AN ACTION (LIKE A PASSWORD OR EMAIL CHANGE) OR TRANSACTION YOU DON'T RECOGNIZE.

19

WAYS IDENTITY THEFT HAPPENS

- LOST WALLET
- MAILBOX THEFT
- USING PUBLIC WI-FI
- PHISHING OR SPOOFING
- SKIMMING
- PHONE SCAMS
- LOOKING OVER YOUR SHOULDER
- MALWARE

20

10

9/27/2022

WAYS TO PREVENT IDENTITY THEFT

- **FREEZE YOUR CREDIT:** FREEZING YOUR CREDIT WITH ALL THREE MAJOR CREDIT BUREAUS — EQUIFAX, EXPERIAN AND TRANSUNION — RESTRICTS ACCESS TO YOUR RECORDS SO NEW CREDIT FILES CANNOT BE OPENED.
- **SAFEGUARD YOUR SOCIAL SECURITY NUMBER:** YOUR SOCIAL SECURITY NUMBER IS THE MASTER KEY TO YOUR PERSONAL DATA. GUARD IT AS BEST YOU CAN.
- **WATCH YOUR MAILBOX:** SIGN UP FOR **INFORMED DELIVERY** THROUGH THE USPS, WHICH GIVES YOU A PREVIEW OF YOUR MAIL SO YOU CAN TELL IF ANYTHING IS MISSING.

21

WAYS TO PREVENT IDENTITY THEFT

- **SHRED ALL MAIL WITH PERSONAL AND FINANCIAL INFORMATION:** SHRED JUNK MAIL, TOO, ESPECIALLY PREAPPROVED OFFERS OF CREDIT.
- **CHECK YOUR CREDIT REPORTS REGULARLY:** CHECK TO BE SURE THAT ACCOUNTS ARE BEING REPORTED PROPERLY AND WATCH FOR SIGNS OF FRAUD, LIKE ACCOUNTS YOU DON'T RECOGNIZE.
- **MONITOR FINANCIAL AND MEDICAL STATEMENTS:** READ FINANCIAL AND MEDICAL STATEMENTS TO MAKE SURE YOU RECOGNIZE EVERY TRANSACTION AND SERVICE PROVIDED.

22

HOW TO REPORT IDENTITY THEFT

- **LOCAL LAW ENFORCEMENT**
 - REPORT IDENTITY THEFT WHERE PERSONAL AND/OR FINANCIAL INFORMATION WAS STOLEN
- **FEDERAL TRADE COMMISSION (FTC)**
 - VISIT [FTC.GOV](https://www.ftc.gov) OR CALL TOLL-FREE 1-877-FTC-HELP (1-877-382-4357)
 - [IDENTITYTHEFT.GOV](https://www.identitytheft.gov) IS A ONE-STOP SHOP FOR INFORMATION AND REPORTING IDENTITY THEFT.

23

HELPFUL CONSUMER TIPS

- BE INFORMED AND DO YOUR OWN RESEARCH (BBB, YELP, ETC.)
- RESIST PRESSURE TO MAKE A DECISION IMMEDIATELY
- KEEP YOUR CREDIT CARD, CHECKING ACCOUNT, OR SS# TO YOURSELF
- DON'T PAY WITH MONEY TRANSFERS OR PREPAID GIFT CARDS

24

County of Santa Clara

Board of Supervisors

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110-1770
(408) 299-6435 TDD 993-8272

Contract Auditor: Harvey M. Rose
Associates, LLC
E-mail: cheryl.solov@bos.sccgov.org

August 21, 2023

Supervisor Otto Lee, Chair
Supervisor Susan Ellenberg, Vice Chair
Board of Supervisors' Finance and Government Operations Committee
70 West Hedding Street San Jose, CA 95110

Dear Supervisors Lee and Ellenberg:

We have completed the Management Audit of the District Attorney's Consumer Protection Unit. This audit was added to the Management Audit Division's work plan by the Board of Supervisors of the County of Santa Clara, pursuant to the Board's power of inquiry specified in Article III, Section 302(c) of the Santa Clara County Charter. This audit was conducted in conformity with generally accepted government auditing standards as set forth in the 2018 revision of the "Yellow Book" of the U.S. Government Accountability Office. The purpose of this audit was to examine the Consumer Protection Unit to identify opportunities to increase their efficiency, effectiveness, and economy.

The report includes three findings and nine recommendations related to the Unit's Mediation Services team, public outreach, and tracking performance and workload. All nine recommendations are directed to the Consumer Protection Unit.

The District Attorney's Office provided a written response to the audit report as Attachment A beginning on page 33, in which the Office agreed with seven recommendations, partially agreed with one recommendation, and disagreed with one recommendation. The nine recommendations and the District Attorney's responses are as follows:

- Agree: 1.1 Develop and adopt performance metrics for the Consumer Protection Unit to track the unit's efficiency at managing consumer complaints, investigations, and prosecution as well as outreach efforts.

Board of Supervisors:

Sylvia Arenas
District 1

Cindy Chavez
District 2

Otto Lee
District 3

Susan Ellenberg
District 4

S. Joseph Simitian
District 5

2-025

County Executive: James R. Williams

for victims after conviction as part of the imposed sentence. Our accomplishments and some noteworthy cases on CPU include:

- Reviewed 261 criminal cases for prosecution, filed 222 criminal complaints in Superior Court, and handled all felony prosecutions from arraignment through sentencing.
- Obtained more than \$2.1 million in restitution orders for victims of crime involving consumer protection laws.
- Worked closely with the Santa Clara County Sheriff's Office *Notario Fraud* Unit to investigate and prosecute immigration consulting crimes, which target vulnerable victims who are often reluctant to come forward due to their immigration status.

One example is the case of a disbarred attorney who was fraudulently providing immigration services and practicing law without a license. After his conviction, and while on probation, he committed additional crimes involving immigration services and the unauthorized practice of law, resulting in a second prosecution by CPU.

In another case, a defendant stole from 20 victims under the false pretense that he would file their immigration paperwork, which he did incorrectly, or not on time, or not at all. Our CPU prosecuted and convicted the defendant of felony grand theft.

- Solved and shut down an online puppy scam that affected 30 victims across the country including San Jose. Convicted the defendant, who lived in Texas, of conspiracy and theft for defrauding victims who were led to believe they were buying a puppy from a reputable dealer. The scam included the claim that the puppy would be put in a COVID quarantine for two weeks unless an additional fee were paid.
- CPU convicted a man who claimed to be a doctor and preyed upon members of the Hispanic community. He took money from victims suffering from arthritis and injected them in his garage, where he had set up an exam table. The injectables were labeled for animal use only. He was sentenced to one year in county jail.

- CPU charged a woman with perjury and identity theft for passing herself off as a licensed dental hygienist in multiple dental offices in Santa Clara County for many years, even after she was warned by a state investigator. CPU located the defendant in another state and arranged for her extradition to San Jose, where she was convicted of multiple felonies.
- CPU investigators made efforts to locate other defendants with active warrants on CPU cases who have been charged but left the jurisdiction, to be essentially never heard from again. For example, a defendant who committed contractor fraud in two cases (from 2012 and 2015) was finally located in Texas. The investigators arranged for his arrest and extradition to Santa Clara County, where he was convicted of grand theft and fraudulent use of a contractor's number, sentenced to 6 months in jail, and ordered to pay restitution.

Civil cases

The District Attorney's Office serves the public interest by investigating and taking legal action on behalf of all consumers (i.e., not representing individual consumers) in the name of the People of the State of California. A typical CPU civil enforcement action involves a pattern or practice of unlawful or misleading conduct by a business affecting a large number of consumers. Civil cases result in a court-filed judgment with public remedies such as civil penalties, injunctive relief, and in some cases, restitution.

Each settlement represents the culmination of what is typically a multi-year period of investigation, negotiation with a corporation's defense counsel, and drafting of settlement documents before a stipulated judgment is submittal for the court's approval.

Our accomplishments during the audit period included:

- Obtained final judgments and injunctions in 51 consumer protection cases. We were the lead or co-lead attorneys on 25 out of those 51 cases. This percentage reflects the fact that the Santa Clara County DA's Office has a major leadership role in multi-jurisdictional consumer protection cases—cases in which our office works with other prosecutors' offices to investigate and prosecute a company for wrongdoing throughout the state.
- In addition to consumer protection cases, obtained final judgments and injunctions in 44 environmental protection cases, which involved acts of unfair

competition by a business. Seventeen out of these 44 cases included violations of consumer privacy laws that require businesses in California to shred or erase confidential customer information before throwing that information into the trash. Our work produced an average of more than one civil settlement per month across the five-year audit period that involved laws protecting consumers.

- Participated in the California Auto Renewal Task Force (CART) with five other prosecuting agencies (the District Attorney's Offices in San Diego, Los Angeles, Santa Barbara, and Santa Cruz counties, and the Santa Monica City Attorney's Office). CART investigates and prosecutes companies that fail to clearly and conspicuously inform consumers that they are enrolling in an automatically-renewing service, fail to secure the consumers' affirmative consent as required by state law, and make it unlawfully difficult for consumer to cancel. CPU obtained a total of 15 judgments against companies for autorenewal violations.
- Participated in the Food, Drug, and Medical Device Task Force (FDMD) with nine other DA's Offices across the state. Consumers are harmed by companies that use false or misleading advertising to market their product, claiming that it may improve, cure, prevent, mitigate, or treat a disease, or affect a function of the body. The companies must have competent and reasonable scientific evidence to support their claims, and our investigations have often revealed they do not. FDMD has investigated the alleged support for these claims and has prosecuted many dietary and nutritional supplement manufacturers and makers of medical devices for violating the law. CPU obtained a total of 21 judgments against companies for unsubstantiated health claims about food, drug, or medical devices.

One case involved a cannabidiol (CBD) company, Cannacraft, which cultivates and manufactures cannabis products. One false and misleading claim was that its CBD product could change gene expression and remove beta amyloid plaque, the hallmark of Alzheimer's disease, from brain cells. This settlement, in which Cannacraft was ordered to pay \$250,000 in civil penalties, is believed to be the first between a law enforcement agency and a licensed California cannabis business over false advertising claims.

- Negotiated two multi-jurisdictional civil settlements for unlawful debt collection practices involving an unreasonable number of phone calls placed to

consumers by defendants Allied Interstate and iQor (\$9 million) and Synchrony Bank (\$3.5 million).

- Settled a civil lawsuit against Apple, Inc., in which the tech giant agreed to pay \$24.6 million in civil penalties in California, based upon allegations that it violated consumer protection laws when it failed to warn owners of older iPhones that processing speeds may be slowed down by certain software updates. The investigation by California prosecutors involved the District Attorney's Offices of Santa Clara, Alameda, Los Angeles, San Diego, and Santa Cruz counties, and the Attorney General's Office. The settlement was part of a nationwide effort by prosecutors from 34 states, which resulted in a \$113 million overall settlement, to hold Apple responsible for the 2017 "throttling" of iPhone 6 and 7 models.
- We prosecuted Walgreens for allowing an unlicensed employee to handle more than 745,000 prescriptions in Santa Clara and Alameda counties, including more than 100,000 prescriptions for controlled substances such as oxycodone, fentanyl, morphine, and codeine. For more than 15 years, Walgreens employed this person as an intern and a pharmacist, although she was never licensed and used the license of someone else with the same name. The civil judgment required Walgreens to pay \$7.5 million in civil penalties, and to ensure compliance by implementing a license verification program, posting proof of licensure, conducting annual audits, and submitting an annual compliance report.
- We investigated and prosecuted other forms of unfair competition, which occurred in supermarkets and other local stores, including price scanner violations at the checkout counter, and the sale of expired products such as baby food and infant formula past the "use by" date.
- Civil penalties are ordered by the court in an enforcement action. In a stipulated judgment, civil penalties (or fines) are negotiated during settlement discussions between the prosecutors and the company that violated the law. In unfair competition cases, civil penalties are divided among the prosecuting agencies that brought the case, and the law requires that these funds be used for the enforcement of consumer protection laws. In the five-year audit period, CPU negotiated settlement in consumer protection cases that resulted in more than \$11.3 million in civil penalties ordered to the Santa Clara County DA's Office. While this is not our measure of the effectiveness of our CPU prosecutors, it would be fair to consider the magnitude of this penalty figure,

and the sheer number of our cases resulting in judgments, as a measure of our hard work and strong advocacy.

Mediation Services

CPU provides important services to the public with its staff in Consumer Mediation Services, who triage consumer complaints that are received directly from the public, provide general information on the rights and responsibilities of consumers and businesses, and educate consumers about potential scams. Some complainants are referred to an appropriate outside agency, and others are handled with the offer of free mediation services, in which case CPU acts as a mediator to assist the consumer and the business in resolving their dispute. Voluntary mediation has often resulted in the parties reaching an agreement in which the consumer receives some or all of their money returned by the business. The accomplishments of the Mediation Services staff include:

- Mediated 1,304 complaints between consumers and businesses, reaching an agreement on 687 cases (52.7% of all mediations).
- Money was returned to consumers in 551 cases (42.3% of all mediations) as part of the agreement. The total amount of money returned to consumers through CPU's Mediation Services was \$1,475,358, which is an average of nearly \$300,000 recovered per year.
- Conducted 64 public outreach events from July 2017 to March 2020, speaking about avoiding scams and related consumer protection issues at senior centers, community centers, and resource fairs, to parent groups and senior citizens, and through television appearances and interviews. The ability of our mediation staff to conduct these in-person outreach events was impacted for the next two years by the pandemic.
- Triaged more than 80 complaints of price gouging during the first four months of the COVID-19 pandemic, sending letters to businesses to educate them about the terms of the Governor's executive order and the requirements of Penal Code section 396 related to price gouging.

Other Accomplishments

- By June 1, 2022, CPU became a "paperless" team within the DA's Office. Files are created and stored electronically on both criminal and civil cases.

Criminal complaints are digitally signed by law enforcement officers, and these complaints (and motions and other pleadings) are e-filed with the court. Discovery is handled electronically. There are no longer any physical files for CPU cases.

- The final two years of the five-year audit period occurred during the COVID-19 pandemic, which impacted the DA’s Office and all other county departments. Despite the pandemic and the transition to remote work, CPU continued its mission of helping and protecting consumers, investigating, and prosecuting companies and individuals that operated in violation of the state’s consumer protection laws, and providing free mediation in disputes over the purchase of consumer goods or services.
- CPU made improvements to the Consumer Protection page on the DA’s Office website, focusing on the three components that link visitors with services: the Consumer Complaint form; the Consumer Mediation Services brochure; and Consumer FAQs.
 - We updated our Consumer Complaint form, which is available in four languages (English, Spanish, Vietnamese, and Chinese), and created an online fillable complaint form for consumers.
 - We updated our Consumer Mediation Services brochure in March 2022.
 - We completed updates to our “Consumer FAQs” in March 2022 and translated these FAQs into Spanish, Vietnamese, and Chinese. The new FAQs focus on providing consumers with the basic, necessary information to make a complaint and giving them simple referral information to outside agencies. For example:
 - “How can a consumer file a complaint about a business?”
 - “Where do I report a scam?”
 - “Who do I contact about a landlord-tenant dispute?”
- Consulted with Assemblymember Marc Berman and provided support for AB 2811 (later amended as AB 390), which was signed into law on October 4, 2021, strengthening protections under California’s Auto Renewal Law by ensuring that consumers can cancel automatic renewal and continuous service subscriptions online. The legislation also requires businesses to notify

consumers before the expiration of a free trial or promotional price included as part of a subscription offer.

- Provided support for SB 1196 (Senator Tom Umberg), which was signed into law effective January 1, 2021, strengthening California's price gouging law, Penal Code section 396. Penal Code section 396 now applies in pandemic emergencies and to online sales in addition to traditional retail sales (both clarifications of existing law), and now covers new sellers as well as previous sellers of the specified consumer goods and services.