

ARTICLES FOR 12-15-16 ROUNDUP

Zoeller reflects on 8 years as Indiana attorney general

By: Olivia Covington

When outgoing Indiana Attorney General Greg Zoeller leaves behind his Statehouse office in January, there are a number of projects in the private sector he plans to pick up.

Those projects will cover “a little bit of everything” in the legal community, the two-term Republican said, but one of the areas he’s most looking forward to working in is legal education and training.

As attorney general, Zoeller created an in-house training program during his first term to ensure his deputies — whom he refers to collectively as a “big law firm” — are trained and competent to handle the wide variety of cases that find their way into the attorney general’s office.

He also had a hand in creating and governing the National Attorneys General Training and Research Institute, a \$2 million legal training program for deputy attorneys general throughout the country. Zoeller said implementing those two programs were among the proudest accomplishments from his eight years in office.

Zoeller hopes to continue to assist in legal education programs with a focus on the practice of law, though he said he is still looking for a central home for all of the ideas and projects he hopes to implement once he leaves office.

He has worked in higher education, teaching courses at Indiana University Robert H. McKinney School of Law and Indiana Tech Law School, which recently announced plans to shut its doors in June.

Zoeller did not make a public comment on Indiana Tech’s closure when it was first announced in late October, but told Indiana Lawyer in November that he had been a firm believer in the school’s experiential learning model.

“We shouldn’t leave it up to law firms to teach practice,” he said.

Zoeller himself was no stranger to controversy during his eight years in office, bringing or adding the state to cases against the federal government that critics often said the state had no business joining. But while many people assumed Zoeller was attempting to fight President Barack Obama’s Democratic policies, the attorney general said his concern was actually what he perceived as executive overreach.

After his first two years in office, Obama no longer had a Democratic majority, so Zoeller said the president began to take the stance that if Congress wouldn’t act on his proposed legislation, he would find ways to get his policies through himself.

“You don’t have to be a constitutional scholar to see that that’s not really how the system is built,” Zoeller said.

As a result, the attorney general either brought or joined several lawsuits, such as the recent Waters of the United States case, challenging the president’s decision to enact policies through federal regulation when the legislative branch refused to act on certain bills. The issue was never about policy, Zoeller said, but instead was a question of the scope of the enumerated powers of the executive branch.

Zoeller said he believes liberals and other critics of his federal lawsuits may bring similar arguments against Republican President-elect Donald Trump, but on a policy basis. If that prediction comes to pass, Zoeller said he has urged his Hoosier Republican colleagues to continue defending the rule of law against federal overreach when Democratic challenges to Trump’s policies arise.

Despite receiving his fair share of criticism for being in conflict with the federal government, Zoeller said 90 percent of the time, his work as attorney general has been collaborative with both national and state government leaders.

When he was sworn in for his second term in January 2013, Zoeller said he told onlookers that he hoped to advance his office from a great law firm to a “force multiplier” within the state government.

To Zoeller, being a force multiplier meant finding ways to increase collaboration between all three branches of government to resolve issues affecting the entire state. He pointed to initiatives such as the Prescription Drug Abuse Task Force as an example of collaboration to combat prescription drug abuse, one of the state’s fastest-growing problems.

“We talk about separation of powers, but that didn’t mean we couldn’t work together,” Zoeller said.

But now that he’s leaving behind his career working among the three branches of government, the outgoing attorney general doesn’t expect to return to the public sector in the future.

Zoeller said he never considered himself a politician and only chose to run for attorney general because he had been the office’s chief deputy and could not go any further unless he put his name on the ballot.

AG FERGUSON MAKES WASHINGTON FIRST STATE TO SUE MONSANTO OVER PCB DAMAGES, CLEANUP COST

State’s damages and costs to clean up PCBs could reach hundreds of millions of dollars, or more

OLYMPIA — Attorney General Bob Ferguson today announced that he has filed an environmental lawsuit against Monsanto in King County Superior Court. The lawsuit seeks damages and cleanup costs associated with the polychlorinated PCB contamination in Washington biphenyls (PCBs)

Monsanto produced for decades while hiding what they knew about the toxic chemicals' harm to human health and the environment.

Monsanto was the only U.S. company to produce PCBs from 1935 to 1979, when the Toxic Substances Control Act banned their manufacture. Ferguson asserts that Monsanto knew these compounds were toxic to humans and wildlife and had spread throughout the ecosystem long before the ban took effect.

PCBs present a public nuisance "that is harmful to health and obstructs the free use of public resources and state waters," the lawsuit alleges, due to Monsanto's negligence and its efforts to conceal the dangers of its product.

The U.S. Environmental Protection Agency (EPA) classifies PCBs as a probable human carcinogen. PCB exposure is associated with cancer, as well as adverse effects on human immune, reproductive, nervous and endocrine systems. In addition, PCBs harm populations of fish, birds and other animal life.

PCBs have been found in bays, rivers, streams, sediment, soil and air throughout Washington state, with more than 600 suspected or confirmed contamination sites from Puget Sound to the Wenatchee River, Lake Spokane to Commencement Bay.

PCBs accumulate in the tissues of fish and other animals, including humans, leading the state Department of Health to issue multiple warnings about fish consumption from rivers, lakes and Puget Sound. Currently, there are 13 active fish consumption advisories related to PCBs, covering several stretches of the Columbia River, all 26,000 acres of Lake Washington, 21 miles of the Wenatchee River and more.

"Monsanto knew the dangers of PCBs yet hid them from the public to generate profits," Ferguson said. "I will hold Monsanto accountable for its actions."

"Monsanto is responsible for producing a chemical that is so widespread in our environment that it appears virtually everywhere we look — in our waterways, in people and in fish — at levels that can impact our health," Gov. Jay Inslee said. "It's time to hold them accountable for doing their fair share as we clean up hundreds of contaminated sites and waterways around the state."

The lawsuit — against Monsanto and two of its splinter companies, Solutia Inc. and Pharmacia LLC — seeks compensation for damages to the state's natural resources, including the economic impact to the state and its residents. It also asks the court to award present and future costs to address the "ongoing public nuisance" caused by PCBs. Damages could reach into the hundreds of millions of dollars or more.

PCBs, marketed and sold under the Monsanto brand name Aroclor, were used in many industrial and commercial applications, from paint and caulking to transformers, capacitors and coolants, among other uses.

What Monsanto knew: Internal document excerptsAs early as 1937, internal Monsanto documents warned of “systemic toxic effects” from prolonged exposure to PCB vapors. By the late 1960s, Monsanto privately cited evidence of global PCB contamination but kept that information from the public. The company chose to conceal the toxicity and pervasive contamination of its chemicals in favor of profits, Ferguson’s complaint alleges.

“There is no practical course of action that can so effectively police the uses of these products as to prevent environmental contamination,” an ad hoc Monsanto committee on PCBs stated in a 1969 internal report. “There are, however a number of actions which must be undertaken to prolong the manufacture, sale and use of these particular Aroclors.”

Another internal report bluntly stated that “there is too much customer/market need and selfishly too much Monsanto profit to go out” to cease PCB production, despite the dangers. Monsanto continued to produce PCBs for another 10 years after articulating that conclusion.

Seattle and Spokane have pending lawsuits against Monsanto over the costs associated with PCB contamination in water treatment, joining Portland and several California cities. The state’s claims are separate from the cities’ and cover much broader ground. The state’s lawsuit does not impede Seattle’s and Spokane’s ability to recover the damages sought in their court actions.

Attorneys from the firms Baron & Budd and Gomez Trial Attorneys, under the direction and oversight of the Attorney General’s Counsel for Environmental Protection, will represent the state in the litigation. The law firms will shoulder the costs of the complex and potentially lengthy case, receiving reimbursement only after a successful result. The firms — which are involved in similar actions against Monsanto, including the Seattle and Spokane lawsuits — will receive a portion of damages to be awarded to the state in the event of a favorable outcome.

Washington’s contractual arrangement with outside law firms is similar to the state’s approach during lengthy multi-state litigation against big tobacco companies, which garnered a record \$206 billion national settlement, split among the states. To date, that settlement has garnered nearly \$2 billion for Washington, which continues to receive payments each year.

Attorney General Ferguson recently created the Counsel for Environmental Protection, led by Assistant Attorney General Bill Sherman, to protect our environment and the safety and health of all Washingtonians.

AZAG Files Motion to Dismiss More Than 1,000 Lawsuits Targeting AZ Businesses

PHOENIX – Attorney General Mark Brnovich announced today his office filed a Motion to Dismiss more than 1,000 open lawsuits filed by a serial litigator that targets Arizona businesses. Advocates for Individuals with Disabilities flooded state courts with more than 1,700 lawsuits against Valley businesses earlier this year. The copy-and-paste lawsuits alleged that businesses’ parking lots did not comply with regulations related to persons with disabilities. Many of the issues were minor and easily fixable, but the lawsuits sought thousands of dollars in damages and attorneys’ fees.

“Abusive litigation practices harm our community,” said Attorney General Mark Brnovich. “These shakedowns strain our collective resources and damage our faith in well-meaning laws and public institutions.”

In September, a court granted AZAG's Motion to Consolidate and stay every open AID state case, and ordered AID to stop filing complaints. Our motion filed today seeks to dismiss the more than a thousand open AID lawsuits on the basis of AID's lack of standing. Some courts have sanctioned AID for these lawsuits and a federal judge recently questioned whether AID's attorney “has engaged in a pattern of professionally unethical conduct.”

Attorney General Files Suit in Massive Real Estate Contract Scheme; Issues Consumer Alert for Real Estate Contracts Operation Holiday Home Protection

This morning, Attorney General Hector Balderas announced that he filed a lawsuit against Jesus Cano for an alleged real estate contract and mortgage scheme involving potentially hundreds of victims and properties in Bernalillo, Sandoval and Valencia Counties.

The lawsuit alleges Mr. Cano and his associates perpetrated fraud and would prey on Spanish-speaking and Hispanic communities in central New Mexico taking anywhere from \$1,000 to \$46,000 from victims with the empty promise of owning a home. Many times the victims would find themselves in substandard homes that they would have to make repairs on themselves just to lose all their money without a getting the title to the home.

“No one deserves to have their dreams for a better life for their family exploited and destroyed. I filed this complaint to help put an end to fraudulent, deceptive and unconscionable practices that prey on working families in New Mexico,” said Attorney General Balderas. “Unfortunately, we often see these types of predatory practices target Spanish-only speaking consumers and Hispanic communities who are underserved by traditional banking and mortgage services. Our office will hold Mr. Cano, and those like him, accountable for taking advantage of these underserved communities, and for tricking families into turning over their life savings just to live in substandard homes they have no certainty of owning in the future.”

The Attorney General's lawsuit seeks restitution for potentially hundreds of victims in New Mexico, fines, injunctive relief to stop Mr. Cano from offering real estate and mortgage services, and attorney's fees for the State of New Mexico. Attorney General Balderas continued, “I am also issuing a Consumer Alert regarding real estate contracts because in addition to the Cano case, our office has received an increasing number of complaints related to their use for the purchase of a home. Families considering purchasing a home need to be aware that real estate contracts do not provide the same protections offered by a mortgage, and they should know that, among other things, a buyer who defaults on a seller-financed real estate contract could face imminent eviction and lose all of the payments made on the property.”

Difficulties qualifying for a traditional mortgage may send potential home buyers to seek out alternative ways to finance the purchase of a home. Real estate contracts have different risks than conventional mortgages, which means that some unscrupulous sellers can take advantage of

buyers. Consumers should confirm that the seller has the legal right to sell the home under a real estate contract. Since a real estate contract is typically between private parties and generally does not involve a title company or traditional “closing,” a consumer may not be able to easily verify that the seller actually owns the home being sold. A consumer can hire a title company or attorney to verify ownership. Consumers are advised to carefully study the terms being offered in the contract, including the annual percentage rate (APR) of the loan, fees, and other important terms such as what will happen in the event that the consumer is late in paying an installment. Consumers also may want to have a home inspection performed on the home prior to signing a real estate contract – once the consumer signs the contract, it is generally not the duty of the seller to repair or maintain the home.

Unlike a traditional home loan, a real estate contract (also called a “land contract” or “contract for deed”) does not involve a loan from a bank to obtain a deed to a home in the name of the consumer. In a real estate contract, the seller retains the legal ownership of the home and thus does not have to file a foreclosure lawsuit in court to take the home and evict the buyer in the event of a default. In some cases consumers can lose the value of substantial improvements made to the home and any money they have paid on the contract.

For more information regarding purchasing a home or if you believe you have been the victim of a scam, please call the Office of the Attorney General toll free at 1-844-255-9210.

Attorney General Racine Launches Consumer Protection Library

Comprehensive Collection of Resources Will Help D.C. Residents Protect Themselves from Scams Popular at Holiday Time and Throughout Year

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WASHINGTON, D. C. – Just in time to help residents learn how to avoid scams prevalent at holiday time such as fake charities and identity theft, Attorney General Karl A. Racine today announced the launch of a comprehensive library of consumer-protection resources. The resources are available online as well as in print, and residents and community groups are welcome to download and print their own copies of the resources or request a printed version from the Office of the Attorney General (OAG) Office of Consumer Protection.

As consumers get in the holiday spirit, give to good causes, and shop online, OAG can help them ensure that their donations are going to legitimate charities and that their personal information remains secure.

“Our office takes our responsibility to protect and educate consumers very seriously,” said Attorney General Racine. “I encourage District residents to learn about the simple steps they can take to protect themselves during this holiday season and beyond. They can also get in touch with our office if they have been taken advantage of by a fake charity, an identity thief, or any other scammer.”

In addition to information about identity theft and fake charities, the new library covers a broad range of topics, including how to recognize lottery and student loan scams, how to get incorrect information removed from credit reports, and what protections exist for car buyers under the District's Lemon Law. To access all of these resources and more, visit OAG's new consumer protection library: <http://oag.dc.gov/consumerprotection>

District consumers can report fraud and scams to OAG's Office of Consumer Protection through the OAG Consumer Hotline at (202) 442-9828, by sending an email to consumer.protection@dc.gov, or online using the Consumer Complaint Form on our website.

“Predatory” Mass Mail Operation Permanently Barred from Targeting Iowans

Miller alleges Waverly Direct Inc. and owner Gordon Shearer, of East Rockaway, NY, sent deceptive prize mailings to older Iowans, and marketed victim lists to con artists. Waverly Direct & Shearer to pay \$20,000.

DES MOINES – A New York company will cease mail marketing to Iowans to resolve a consumer fraud lawsuit filed by Attorney General Tom Miller.

Polk County District Court Judge Brad McCall Monday approved a consent judgment that resolves Miller's lawsuit, filed in September, against Waverly Direct Inc., and owner Gordon F. Shearer, of East Rockaway, New York.

The suit alleged the company solicited older Iowans with bogus notices of financial winnings and then sold customer lists to con artists.

In addition to halting the mailings to Iowans, the consent judgment orders Waverly Direct and Shearer to pay \$20,000 to the Consumer Protection Division for consumer fraud enforcement efforts, including \$8,750 in refunds to Iowa victims.

According to the lawsuit, since 2005 Shearer and his company sent Iowans letters from the fictitious director of the bogus “Numerological Resource Center,” congratulating each Iowan for being personally “selected” to receive a large sum of money and other life-changing benefits. The letter asks the recipient to provide key personal information — including age and phone number — and to send it back with a \$25 fee.

“Deceiving older Iowans into making payments – sometimes repeated payments – of \$20 or \$25 was reason enough to sue these operators,” Miller said. “But even more damaging was their practice of renting lists of victims’ names to other scammers. That multiplied peoples’ losses – especially those who are more vulnerable.”

According to the lawsuit, the case involved a series of deceptive and unfair practices. The practices illustrate common abuses by certain mass mailers:

A “confidential” personalized letter congratulates the “winner,” falsely stating that he or she has been specially selected to receive dramatic wealth and other benefits.

The letter highlights an attention-getting sum of money – \$2,150,000 – insinuating that's what the recipient can expect to receive.

The consumer is told to respond quickly, because the matter is “extremely urgent.”

The mailing to the consumer includes a “Publicity Information Release” form, intended to heighten the false impression that the consumer has won a news-worthy prize.

What the consumer actually receives for his or her payment is a short “report” with general advice from a supposed psychic – a report Miller’s lawsuit called “worthless drivel.”

The consumer is asked to provide important personal information, including age, phone number, and credit card use – information that would prove valuable to other fraudsters looking for suitable victims.

The name of each Iowan who responds gets added to a list, which is then rented out to other perpetrators who seek vulnerable victims for their own predatory schemes.

Miller said that company records identified about 70 recent Iowa victims who will receive refund checks, but that other Iowans who lost money to this scheme should contact the Consumer Protection Division for a refund as well.

“We stopped this deceptive operation from continuing to target Iowans, but sadly there are many others with very similar schemes,” Miller said. “Be skeptical whenever you read or hear a claim that you’re a big winner, whether it comes through the mail, online, by phone, or in-person.”

TIPS FOR CONSUMERS:

Claims that you’ve won a big prize should make you get a tight hold on your wallet, because it’s almost always part of a scam. Don’t be fooled!

Personalized letters from strangers may convey a personal interest in your life and well-being, but they are typically mass-mailed to tens of thousands, to see who will “bite” by sending a check. Don’t waste your money!

Once victimized, an Iowan who sends money to scammers may be added to a target list used by other scammers, who will then create other lists to rent, and so on. This can result in a “feeding frenzy,” as one fraud after another goes after each vulnerable victim.

Iowans should be especially aware that this can happen to older relatives, neighbors, or friends, and should report such incidents to the Consumer Protection Division.

For more information or to file a complaint, contact the Consumer Protection Division through the Attorney General’s website at www.IowaAttorneyGeneral.gov or email directly to consumer@iowa.gov. Consumers can also call the Consumer Protection Division at 515-281-5926, or outside the Des Moines area, toll free, at 1-888-777-4590.

Attorney General Kamala D. Harris Announces Proposed Regulations for the Collection of Data During Law Enforcement Stops

LOS ANGELES - Attorney General Kamala D. Harris today announced the proposed regulations for the collection of stop data that law enforcement agencies must report under California's Racial and Identity Profiling Act of 2015, Assembly Bill (AB) 953. The proposed regulations are available at oag.ca.gov/ab953/regulations, and individuals are encouraged to provide comment on them at any point during the public comment period, which will last from December 9, 2016 through January 27, 2017.

"Racial and identity profiling weaken public trust and have debilitating effects on communities. These regulations and data will help law enforcement improve policing practices and strengthen accountability," said Attorney General Harris. "The existence of bias in policing undermines our criminal justice system and hurts public safety. I am proud that California continues to lead the nation in leveraging data and technology to identify and address disparities where they exist."

AB 953, among other things, requires local and certain state law enforcement agencies to collect data and report to the California Attorney General's office information on each stop conducted by that agency's officers. The law defines a stop as any detention by a peace officer of a person or any peace officer interaction with a person in which the officer conducts a search, including a consensual search. AB 953 delineates the minimum information that must be collected on each stop and requires the regulations issued by the Attorney General to specify all data to be reported.

In developing the proposed regulations, the Department consulted with a wide variety of stakeholders, including the Racial and Identity Profiling Advisory Board established by Attorney General Harris in July, state and local law enforcement agencies and associations, civil rights groups – including individuals representing the LGBT, immigrant, disability and youth rights communities – community organizations, and members of academia.

The proposed regulations would require officers to record and collect information on the date, time, duration, location and type of stop; an officer's reason for presence at the scene, meaning the circumstances under which the officer first encounters a person subject to a stop; the reason for the stop; actions taken by an officer during the stop; and the result of the stop. The proposed regulations also require officers to record perceived demographic information on the person stopped, including the perceived gender, race, and age of the person stopped, whether the person has limited English proficiency or a pronounced accent, and whether the person has a perceived or known disability. In order to better understand the context for each stop, the proposed regulations would also collect information on the officer's type of assignment, in addition to their years of experience. The stop data submitted to the Department will connect stops by officer using a unique identifier in order to preserve the anonymity of the officer.

Additionally, the proposed regulations outline the specific reporting requirements for stops in certain settings, including when and how to capture interactions with passengers in motor vehicle stops, interactions involving large numbers of people, such as mass evacuations or crowd control, and stops of students in K-12 public schools.

The proposed regulations further specify that reporting agencies must submit data to the California Department of Justice electronically and provide for the methods by which agencies will be able to submit this data. As specified by AB 953, each year the Racial and Identity Profiling Advisory Board will issue a report with this data disaggregated by law enforcement agency, and the data will also be made available through the Department's OpenJustice website, an unprecedented, first-of-its-kind criminal justice open data initiative launched by Attorney General Harris in 2015.

Today's announcement of the proposed regulations begins a public comment period, which will conclude on January 27, 2017. All members of the public are invited to submit a comment on the proposed regulations, and may do so in one of the four ways outlined below.

Attorney General Sorrell's Law Enforcement Community Interaction Working Group Delivers Final Report And Recommendations To The Vermont Criminal Justice Training Council

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“‘Implicit bias’ is one factor that may contribute to disparities in the Vermont criminal justice system,” states the final report of the Attorney General’s Working Group on Law Enforcement Community Interactions. Attorney General Sorrell partnered with representatives from other governmental and non-governmental organizations to form the advisory committee and examine the role that implicit bias plays in interactions between law enforcement officers and members of the community. The Working Group’s goal was to make recommendations to the Training Council on how to enhance training that addresses implicit bias. The Working Group met that goal today when it delivered its final report at the Training Council’s quarterly meeting.

According to the final report, “implicit bias”—also known as “unconscious bias”—describes the innate cognitive process in all human beings where the brain automatically associates one thing with another and then uses the mental association to inform decisions in new situations. Implicit bias helps explain why the mere knowledge of a stereotype can influence how a person perceives and reacts to other people who are different in some way. “All human beings have implicit biases, even people who choose to reject prejudice and discrimination,” observed the Working Group in its final report.

“I would encourage people to learn more about their own implicit biases by taking an Implicit Association Test on the Project Implicit website,” urged Attorney General Sorrell. Project Implicit is a non-profit organization founded in 1998 by scientists interested in educating the public about hidden biases; the organization provides consulting, education, and training services on implicit bias, diversity and inclusion, leadership, applying science to practice, and innovation. “I have taken a version of the test. It only takes ten minutes, and the results were very helpful to me,” said Sorrell. Anyone can take an Implicit Awareness Test by visiting the following link: <https://implicit.harvard.edu/implicit/>.

The Working Group held public hearings and solicited input during October, but the genesis of the project came earlier. “I broached this issue with the Training Council over the summer, and I have been very pleased that they fully endorsed and supported this process throughout its duration,”

said Sorrell. For its part, the Training Council enthusiastically welcomed the delivery of the report today, and unanimously voted to act immediately to generate a timeline and identify the resources needed to address each of the Working Group's recommendations.

“Now that we have made our recommendations, we hope that the Training Council receives whatever support it needs from the Legislature to implement them,” said Sorrell. He also called for continuing action: “The scope of this project was very narrow because of the amount of time we had to complete it. There is more work to be done.” The Working Group’s final report noted that implicit bias is not the only thing that would cause inequality in the Vermont criminal justice system or elsewhere in society. The final report also acknowledged that implicit bias affects other people in the criminal justice system, such as corrections officers, attorneys, and even judges. Sorrell said, “We hope that the conclusion of our work on this report is actually a starting point for future efforts.”

In addition to Attorney General Sorrell, the members of the Working Group are Senator Tim Ashe, Jay Diaz from the Vermont chapter of the ACLU, United States Attorney Eric Miller, Representative Kiah Morris, Karen Richards from the Vermont Human Rights