

Colorado

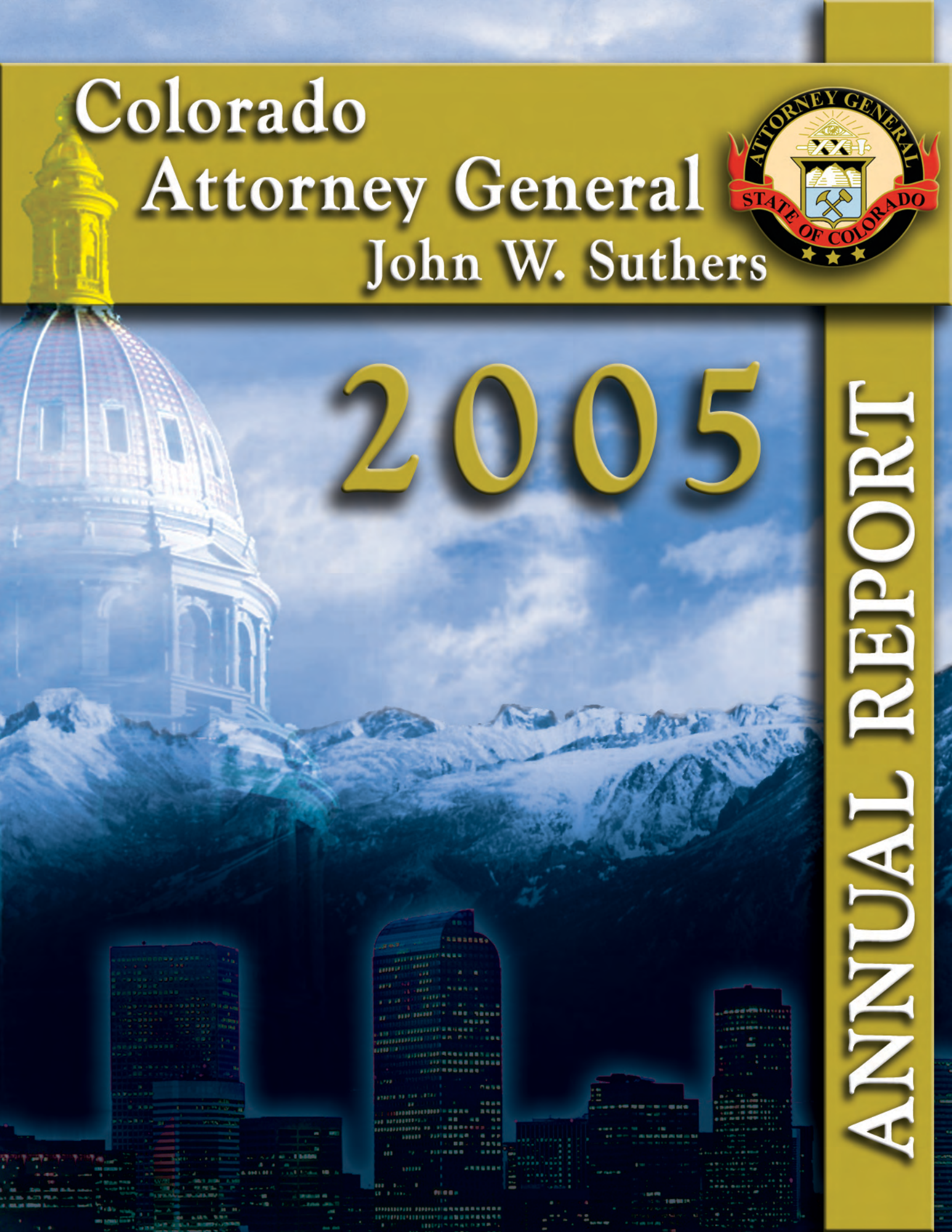
Attorney General

John W. Suthers



2005

ANNUAL REPORT





## DEPARTMENT OF LAW

# 2005 ATTORNEY GENERAL'S ANNUAL REPORT



### A MESSAGE FROM ATTORNEY GENERAL JOHN W. SUTHERS

Dear Fellow Coloradans,

It is my privilege to present the Colorado Attorney General's 2005 Annual Report. I am proud of the many accomplishments and milestones achieved throughout the past year, my first as your Attorney General.

In 2005, the Attorney General's Office made it a priority to increase protections for our children and communities. I was proud to stand with law enforcement from across the state as we launched the *Attorney General's Safe Surfing Initiative* to help parents and students learn more about the dangers lurking online. During the year, I visited several Colorado schools and Boys & Girls Clubs to help share this message about Internet safety, and worked with members of the Colorado Legislature to introduce legislation to make it a crime to solicit a child for sex.

Maintaining a commitment to Colorado consumers, our office's Consumer Protection Section in conjunction with the Better Business Bureau handled nearly 16,000 complaints and opened numerous investigations into deceptive trade practices. Our office also formed a Mortgage and Foreclosure Fraud Task Force to help educate and prevent consumers from losing their primary financial asset to the growing industry of mortgage and foreclosure scams.



Colorado's Attorney General,  
John W. Suthers

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Last year was also a year of accomplishments in the areas of natural resources. We settled a twenty-two year-old case filed by Kansas over the Arkansas River and worked to bring closure to the State's litigation over the final cleanup of Rocky Flats and the Rocky Mountain Arsenal. Protecting our natural resources is a top priority of mine and I will continue to fight to preserve our way of life for future generations to enjoy.

It has been an honor to serve as your 37<sup>th</sup> Attorney General. Along with a talented and dedicated staff, I look forward to meeting the challenges facing our state and continuing our successes in 2006.

Sincerely,

A handwritten signature in black ink that reads "John W. Suthers". Below the signature, the name "John W. Suthers" and the title "Colorado Attorney General" are printed in a serif font.

John W. Suthers  
Colorado Attorney General

## EXECUTIVE OFFICE

The Colorado Attorney General is one of four independently elected statewide offices in Colorado and was established by the state constitution upon statehood in 1876. The Attorney General and the Department of Law, which Attorney General John W. Suthers oversees (collectively referred to as the Colorado Attorney General's Office), represents and defends the legal interests of the people of the State of Colorado and its sovereignty. The Attorney General's Office consists of nine sections that carry out the

duties and responsibilities of the office. Those sections include the Executive Office of the Attorney General, Administration, Appellate, Criminal Justice, Consumer Protection, Natural Resources, Civil Litigation and Employment Law, State Services and Business and Licensing. The Executive Office manages the daily operations and sets priorities and initiatives for the Attorney General's Office.



### Attorney General John W. Suthers

In January of 2005, Mr. Suthers was nominated by Governor Owens and confirmed by the State Senate as the 37th Attorney General of Colorado. As Attorney General, he represents and defends the interests of the People of the State of Colorado and is chief legal counsel and advisor to state government and its many state agencies, boards and commissions.

John Suthers, is a Colorado native, and graduated magna cum laude from the University of Notre Dame

with a degree in government in 1974 and from the University of Colorado Law School in 1977.

Mr. Suthers has worked extensively in both private practice and as a public servant. During his tenure in public service, Mr. Suthers has served as District Attorney of the Fourth Judicial District, Executive Director of the Colorado Department of Corrections and as United States Attorney for the District of Colorado.

### Chief Deputy Attorney General Cynthia Honssinger Coffman

Cynthia Honssinger Coffman is chief of staff for the Department of Law's legal and administrative support staff. Ms. Coffman joined the Attorney General's Office in March 2005, after serving as Chief Counsel to Colorado Governor Bill Owens.

Prior to working at the State Capitol, Ms. Coffman was Deputy Executive Director of the Colorado Department of Public Health and Environment. There, she oversaw legal and regulatory issues and

worked extensively on the state's bioterrorism preparedness efforts and emergency planning.

She also was a founding member of the Public Health Law Association, a national professional organization formed in conjunction with the Centers for Disease Control and Prevention. She has served for five years on the faculty of the Centers' annual public health law conference and remains active in the field of health law.



Ms. Coffman's previous employment includes the Colorado Legislative Council, the Atlanta Committee for the Olympic Games, and the Georgia Attorney General's Office. She is an honors

graduate of the University of Missouri-Columbia and holds a juris doctor from Georgia State University College of Law.

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## Solicitor General Allison Eid

Allison Eid became Solicitor General of Colorado in August of 2005. She is on leave from her position as associate professor at the University of Colorado School of Law, where she teaches Constitutional Law, Legislation, The Law of Politics, first-year Torts, and Advanced Torts. Before joining the faculty of the Law School, in 1998, Professor Eid clerked for the Honorable Clarence Thomas, Associate Justice of the United States Supreme Court, and for Judge Jerry E. Smith of the United States Court of Appeals for the Fifth Circuit. She also practiced commercial and appellate litigation with the Denver office of Arnold & Porter. Professor Eid graduated with High Honors in 1991 from The University of Chicago Law School, where she served as Articles

Editor of *The University of Chicago Law Review* and was elected to the Order of the Coif. After earning her bachelor's degree in American Studies (With Distinction and Phi Beta Kappa) from Stanford University in 1987, she served as a Special Assistant and Speechwriter to then-U.S. Secretary of Education William J. Bennett. In 2002, President Bush appointed Professor Eid to serve on the Permanent Committee for the Oliver Wendell Holmes Devise, established by Congress in 1955 to prepare the History of the U.S. Supreme Court.

Professor Eid is married to Troy Eid, a partner in the law firm of Greenberg Traurig and a former member of Governor Owens' cabinet, and has two children, Alex and Emily.

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## Jason Dunn

### Deputy Attorney General for Legal Policy and Governmental Affairs

Jason Dunn serves as Deputy Attorney General for Legal Policy and Governmental Affairs. In that capacity, he is the senior policy advisor to the Attorney General and liaison to federal, state and local governments. Dunn also serves as Assistant Solicitor General for Civil Appeals, litigating matters on behalf of the State and representing the Attorney General and Solicitor General on the Initiative Title Setting Review Board. He joins the office from the private

sector, having practiced in public policy and water law for Hale Friesen, LLP, in Denver. Prior to that, Dunn practiced with a boutique water law firm in Boulder, and served as a law clerk to Justice Nathan Coats of the Colorado Supreme Court. Dunn was appointed by Governor Owens to serve as a member of the Judicial Performance Commission for the 17th Judicial District, and is Vice-Chairman of the Broomfield Land Use Review Commission.

# ATTORNEY GENERAL SUTHERS' INITIATIVES FOR A STRONGER COLORADO

## Protecting Coloradans: Attorney General's Safe Surfing Initiative

*Approximately one in five children ages 10-17 who use the Internet frequently have received a sexual solicitation or approach over the Internet.*

According to statistics provided by the National Center for Missing and Exploited Children, approximately one in five children ages 10-17 who use the Internet frequently have received a sexual solicitation or approach over the Internet. As more people gain access to the Internet, the

numbers of victims increases exponentially. In an effort to keep children safe from online predators, Attorney General Suthers

launched the Attorney General's Safe Surfing Initiative on May 25, 2005, in recognition of National Missing Children's Day. At the launching, Attorney General Suthers

announced several measures, including legislative

recommendations and

educational programs to help prevent our children from becoming victims to online predators. With the support of Senator Paula Sandoval (D-Denver) and Representative Bob McCluskey (R-Larimer), Attorney General Suthers proposed a Legislative package to criminalize the use of the Internet to solicit a child for sexual activity, and to make possession of over twenty images of child pornography a felony. In the months following the announcement of this initiative, Attorney General Suthers hosted educational conferences about the dangers children face on the Internet in several major cities and schools across the State.



Teaching Castro Elementary fourth graders about Internet safety

### Parents urged to get as Net savvy as kids

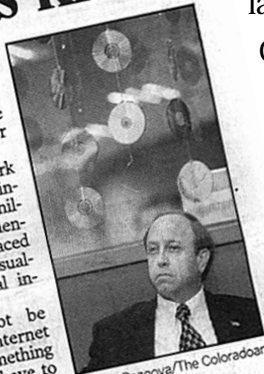
By KEVIN DUGGAN  
KevinDuggan@coloradoan.com

As welcoming and fun as it is, the Internet can be a dangerous place for kids.

Sexual predators lurk in online chatrooms intended for use by children and teens, and identities can be swiftly traced through any bit of casually dropped personal information.

That might not be news to the Internet savvy, but it's something many adults still have to learn, officials told a roomful of parents Monday at the Boys & Girls Club, 1608 Lancer Drive.

One in five children ages 10 to 17 who use the Internet frequently have been sexually solicited, said Colorado Attorney General John Suthers. One in 33 has been aggressively pursued, as in letters or requests for a



*'The same things that make it so great for information gathering make it a perfect venue for pedophiles and other sexual deviants.'*

JOHN SUTHERS,  
Colorado attorney general

See NET/Page A2



Page 8A

The Fort Morgan Times

Saturday, August 27, 2005

## Stronger warning system urged for sexual predators

DENVER (AP) — A task force investigating a breakdown in the state's warning system for sexually violent predators recommended Friday that communities be automatically notified when the state's most dangerous sexual criminals are released from prison.

"Under current law, community notification regarding sexually violent predators, it's not automatic. In some cases, it's not even assured," said Gov. Bill Owens, who commissioned the task force.

Owens set up the panel in June

after the Colorado Department of Corrections acknowledged it had failed to warn communities whether previously released offenders were a threat to the public.

A 1999 law requires the state to evaluate potential sexual predators before they are released from prison. The Denver Post reported that just two men had been identified as predators, even though more than 1,300 met the initial criteria.

The panel recommended Friday that the law be changed to

primarily responsible for identifying predators.

"We're eliminating confusion about what's the best time to do the assessment and designation," said Attorney General John Suthers, a member of the task force. "It's this community's view that the best time to do that is in the sentencing process."

Corrections Department spokeswoman Alison Morgan said the existing law leaves some confusion about her department's role. She said the prison system was intended to be a backup for identifying potential predators among inmates who may have previously been missed.

ed to be a backup for identifying potential predators among inmates who may have been missed earlier.

The panel also recommended the same notification requirements for sexually violent predators move to Colorado state. The

violent predator fail to comply with the quarterly registration requirements.

State Rep.

## Suthers targets Net predators

### Attorney general wants tougher sentences for those who prey on children using Internet

By Jim Greenhill  
Herald Staff Writer

As state attorney general, Ken Salazar worried about children's safety at school; his successor worries their safety at computer key-

tives. In the wake of the 1999 Columbine shootings, Salazar's was a study of Internet statistics and a first-hand experience prompted Attorney General John Suthers, Salazar's successor, to launch the Attorney General's Safe Surfing Initiative.

The experience came when a law enforcement officer posing as a child

demonstrated to Suthers how quickly predators strike. The officer went into an Internet chat room. Within minutes, not only was an adult aggressively sexual with the "child" but he had set up a Web cam feed in which he appeared naked performing a sexual act.

"The numbers are pretty staggering," Suthers said during a Monday visit to Durango.

According to the National Center for Missing and Exploited Children, See Predators, 8A

Colorado Attorney General John Suthers talks about his effort to combat adults who prey on children via the Internet during a visit Monday to The Durango Herald.



Saturday, Aug. 27, 2005

GoWest

TRIBUNE A5

## Warning system may be set up

### Task force recommends alerting state when sexual predators are released

ASSOCIATED PRESS

DENVER — A task force investigating a breakdown in the state's warning system for sexually violent predators recommended Friday that communities be automatically notified when the state's most dangerous sexual criminals are released from prison.

"Under current law, community notification regarding sexually violent predators, it's not automatic. In some cases, it's not even assured," said Gov. Bill Owens, who commissioned the task force.

Owens set up the panel in June after the Colorado Department of Corrections acknowledged it had failed to warn communities whether previously released offenders were a threat to the public.

A 1999 law requires the state to evaluate potential sexual predators before they are released from prison. An area newspaper reported that just two men had been identified as predators, even though more than 1,300 met the initial criteria.



ASSOCIATED PRESS

The panel recommended Friday the law be changed to clarify that the Probation Department is primarily responsible for identifying predators.

"We're eliminating confusion about what's the best time to do the assessment and designation," said Attorney General John Suthers, a member of the task force. "It's this community's view that the best time

to do that is in the sentencing process."

Corrections Department spokeswoman Alison Morgan said the existing law leaves some confusion about her department's role. She said the prison system was intended to be a backup for identifying potential predators among inmates who may have previously been missed.

The panel also recommended the same notification requirements for sexually violent predators who move to Colorado from another state. The law currently has no such requirement.

"This is an obvious incentive, in fact, for people who move across state lines to avoid the laws in their respective states," Owens said.

The panel also wants to make arrest mandatory should a sexually violent predator fail to comply with the quarterly registration requirements.

As of Aug. 12, 35 were completed. Six inmates have been identified as possible sexually violent predators, but they face further evaluations before a final determination.

One inmate, Jason Ballard, was designated a predator before he was released from prison. Fort Collins police notified residents this week he is living there.

"We felt it was important to notify the community," police spokeswoman Rita Davis said. About 350 people attended the meeting where Ballard was discussed.

Davis said Fort Collins police would need more time to investigate the panel's recommendations before deciding whether to support them.

"It's very positive to let the community know when you have a sexually violent predator in the community," she said. "I think we have to be very cautious in the labeling of the individuals to make sure they are properly labeled."

## Task Force on Sexually Violent Predators

The Task Force on Sexually Violent Predators (SVP) was created in June through an Executive Order by Governor Owens to address deficiencies in the identification and community notification of sexually violent predators.

Attorney General Suthers chairs the SVP taskforce, which includes members from law enforcement and state entities responsible for the identification and notification of sexually violent predators.

Since creating the SVP Task Force, significant advances have been made and processes have been implemented to ensure the safety of all Coloradans.



## Building Safer Schools and Zero Tolerance for Bullying

According to the U.S. Secret Service, in 75 percent of violent incidents in our schools, someone other than the attacker knew it was going to happen but failed to report it. Attorney General Suthers believes that Colorado's schools must be safe places for our children. To help build safe schools in our communities and prevent incidents of bullying, The Attorney General spoke at several conferences and meetings to encourage school safety assessments.

In recognition of School Safety Month in October, Attorney General Suthers urged students to do their part to ensure their schools are safe environments and report any suspicious activity or tips that could deter school violence. Through

Safe2Tell, an initiative the Attorney General's Office has partnered with to deter school violence, students and parents can anonymously report tips by calling a toll-

free line (877-542-SAFE) and speak with a highly trained professional at the State Patrol Communications Center. The caller's name is kept anonymous and the tip is immediately forwarded to the school principal and/or law enforcement. Translation services are available 24 hours a day. In conjunction with School Safety Month, Attorney General Suthers also sent school administrators and superintendents packets of posters and a letter encouraging prevention efforts and explaining the Safe2Tell program.

Friday, October 14, 2005

PARK COUNTY REPUBLICAN AND FAIRPLAY FLUME

### Report school violence

DENVER — In recognition of School Safety Month, Colorado Attorney General John Suthers urges students to do their part to ensure their schools are safe environments and report any suspicious activity or tips that could deter school violence.

"With school back in session, it is important that we remind our students they play an important role in the safety of their school," said Suthers. "One way we can help keep our children safe is by encouraging efforts like the Safe2Tell program, an initiative the Attorney General's Office has partnered with to deter school violence."

In conjunction with this announcement, Suthers sent school administrators and superintendents packets of posters and a letter encouraging prevention efforts and explaining the Safe2Tell program.

"According to the U.S. Secret Service, in 75 percent of violent incidents in our schools, someone other than the attacker knew it was going to happen but failed to report it," said Suthers. "The Safe2Tell initiative encourages students to voice their concerns and take responsibility for keeping themselves and others safe."

Safe2Tell is a nonprofit organization of the Crime Stoppers Program. Students who are concerned about a threat can call their toll-free tip line at 877-542-SAFE and speak with a highly trained professional at the State Patrol Communications Center. The caller's name is kept anonymous, and the tip is immediately forwarded to the school principal and/or law enforcement.

Translation services are available 24 hours a day. "Young people know what is happening in and around their schools. They know if there is unsafe behavior, a planned fight, alcohol, drugs, guns, they know if someone is depressed or being bullied," said Safe2Tell Director Susan Payne. "If they are concerned about their safety or the safety of someone else, it is critical that they tell an adult they trust or Safe2Tell. Early intervention and prevention are critical."

Further information on the Safe2Tell program can be found by visiting at <http://www.safe2tell.org>.



## AARP ElderWatch: A Partnership with Colorado's Seniors

In 2005, the Attorney General's Office continued a close working relationship with AARP ElderWatch and Colorado's senior population. The partnership yielded joint consumer alerts and events such as the state's first "Fight Fraud – Shred Instead" identity prevention effort, a free event to provide Coloradans with a way to safely discard outdated personal and financial documents. The event, which was held at a senior center, attracted hundreds of consumers, and approximately one ton of documents were shredded.

*In 2005, the Attorney General's Office continued a close working relationship with AARP ElderWatch and Colorado's senior population.*



Attorney General Suthers speaks to participants at the State's first "Fight Fraud-Shred Instead" event



Attorney General Suthers at an event in Weld County



Attorney General Suthers meets with constituents in Grand Junction

## Fighting Consumer Fraud: Mortgage and Foreclosure Fraud Task Force



Attorney General, John Suthers unveils a brochure to help consumers fight fraud.

Consumer protection is among Attorney General Suthers' top priorities. Given the rise of foreclosures and mortgage fraud in Colorado, Attorney General Suthers convened a Mortgage and Foreclosure Fraud Task Force to help prevent Coloradans from falling victim to this growing wave of consumer fraud.

The Task Force is comprised of public trustees, district attorneys, law enforcement and county clerk and recorders from across Colorado.

The Attorney General charged the Task Force with three tasks: 1) create a public outreach effort to educate susceptible victims, 2) develop methods for multi-jurisdictional cooperation among law enforcement and other organizations and individuals that confront foreclosure and mortgage scams, and 3) draft legislative proposals to strengthen Colorado laws and provide greater consumer protection during the foreclosure process.

In November 2005, Attorney General Suthers hosted public forums in Northern Colorado and Grand Junction to educate the public about mortgage and foreclosure fraud. Additional forums throughout the state are planned for 2006.





John W. Suthers  
Colorado Attorney General

## WARNING!

**SOMEONE MAY  
TRY TO TAKE  
ADVANTAGE OF  
YOU DURING  
FORECLOSURE**

This brochure has been created as an educational tool – it is not intended to serve as legal advice. You are encouraged to contact a HUD-approved housing counselor or a private attorney.

This important information is brought to you by:

John W. Suthers  
Colorado Attorney General  
1525 Sherman Street, 5th Floor  
Denver, Colorado 80203  
303-866-4500  
[www.ago.state.co.us](http://www.ago.state.co.us)

County Public Trustee

## HELP IS AVAILABLE

Foreclosures can be complex and confusing. Contact the agencies below for additional information:

### Public Trustee

HUD Housing Counselors  
1-800-569-4287

Colorado Legal Services

Consumer Credit Counseling

Colorado Housing Coalition  
[www.housingcounseling.com](http://www.housingcounseling.com)

HUD  
[www.hud.gov](http://www.hud.gov)

Bar Association

*If you suspect fraud:*

Local District Attorney

Colorado Attorney General  
1-800-222-4444

HUD  
1-800-543-9378, ext. 1005

## FRAUD WARNING

Although the foreclosure process begun on your home is now a matter of public record, this does not mean that you have lost your home. You may receive offers of "help" from complete strangers in the mail, over the telephone, and at your door. Some of these people may attempt to steal the equity you have built up in your home. Be on the lookout for some of these **COMMON SCHEMES**:

- Offers to "Fix" or "Stop" your foreclosure or other promises to "save" your home
- Claims of "foreclosure solutions"
- Promises to "cure" your default or "repair" your credit
- A "guaranteed buy out" or quick "cash for your home"
- Sale and lease-back schemes – a scheme in which you are encouraged to sell your home for a fraction of its current value and then rent it back until you can afford to buy it again

## WHAT TO DO

There are simple things you can do to avoid becoming a victim of a foreclosure scam.

- Don't sign any documents until you have had time to review them carefully.
- Contact a HUD-approved housing counselor or a private attorney to help you review and understand the documents.
- Remember - Any kind of "Deed" (warranty deed or quit claim deed) means you are selling your home. Be especially careful of programs that lease your home back to you with a promise that you can repurchase it at a later date.
- Contact your lender, explain your financial situation, and work out a payment plan. You might be surprised at how reasonable lenders can be if you talk to them and honestly explain your financial problems.

## FORECLOSURE BASICS

**A FORECLOSURE DOES NOT MEAN YOUR HOME IS LOST. BUT YOU MUST ACT QUICKLY.** Contact your Public Trustee to learn more about foreclosure procedures, including: **CURE**

The law gives you the right to bring your loan current to stop the foreclosure. You must file a **Notice of Intent to Cure** with your Public Trustee **AT LEAST** 15 days before the scheduled sale date. This payment is due before noon on the day before the sale.

### REDEEM

You still own your property for 75 days after the foreclosure sale, or 6 months for certain agricultural property and may sell or refinance your property during that time. Contact the Public Trustee to confirm the amount required to redeem. However, you must file a **Notice of Intent to Redeem** with your Public Trustee **AT LEAST** 15 days before the end of this redemption period. This payment is due by the end of business on the last day of this period.

*The Colorado Attorney General's website received the "WAGGY Award" from the Conference of Western Attorneys General for Best Website Redesign.*

## Reaching Out and Serving the Public

To better assist Coloradans, the Colorado Attorney General's website was redesigned and launched in July. The new, user-friendly website provides several additional features to assist consumers, including a Consumer Resource Guide. This Guide addresses frequently asked questions and provides valuable tips to consumers.

Among the hundreds of topics, the Consumer Resource Guide features advice on how to avoid common schemes and fraud, how to manage your credit, and how to avoid identity theft. The Guide also includes contact information and links to other helpful resources.



Colorado Department of Law Website

**www.ago.state.co.us**



Attorney General Suthers on KFKA 1310 AM



Attorney General John Suthers takes his oath of office



Attorney General Suthers meets with constituents



The Safe Surfing Initiative Kick-Off

## DEFENDING STATE SOVEREIGNTY

One of the paramount duties of the Colorado Attorney General is to provide high quality, cost-effective legal services to the State of Colorado. As detailed in the pages of this report, the Attorney General, the Solicitor General, and the lawyers throughout the office represent the State of Colorado in cases in courts at all levels, from the state district courts to the U.S. Supreme Court. Through this representation, the Attorney General seeks to protect the sovereignty of the State of Colorado—that is, the ability of Colorado to set its own direction, priorities, and course of governance.

Nevertheless there are opportunities to protect Colorado's interests beyond litigating cases in which the state is a party. Colorado acts as a "friend of the court"—called an amicus—in numerous cases each year across the country. The Attorney General determines when a particular case raises an issue important to Coloradans, and through an "amicus brief" informs the court hearing the case—oftentimes the U.S. Supreme Court—of Colorado's concerns.

In the last year, for example, the Attorney General wrote several amicus briefs supporting the efforts of law enforcement. These briefs argued that:

- police officers should be given wider latitude to investigate suspicious behavior while on patrol;
- police officers should be permitted to conduct searches where consent has been given by a party in control of the premises;
- errors in jury instructions with regard to sentencing should be deemed harmless where evidence of criminal guilt is overwhelming.

Additionally, the Attorney General joined other states in:

- arguing that the District of Columbia should not be permitted to hold out-of-state firearm manufacturers strictly liable for gun-related crimes committed within the district;
- defending state statutes that charge out-of-state residents higher fees for hunting and fishing licenses;
- defending state laws that define marriage as a union between a man and woman against constitutional challenge;
- arguing that juries do not need to be instructed to reject the death penalty when they find that the aggravating and mitigating circumstances are in equipoise; and
- defending the voluntary recitation of the Pledge of Allegiance in public schools as consistent with the First Amendment.

By making Colorado's position clear to courts across the nation, the Attorney General seeks to protect the state's ability to chart its own future.



# ADMINISTRATION

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## PROVIDING EFFECTIVE ADMINISTRATION FOR THE DEPARTMENT OF LAW

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Under the leadership of Katherine Newell, the Administration and Planning Section provides myriad services for the Department and its employees, including managing the budget and finances and providing staff with human resource services, information technology, word processing and general support services. In providing these services, this section analyzes the needs of the Department and develops methods of providing the most efficient, wide-ranging, and cost effective service possible.

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### Information Technology's Expanding Role in Litigation

To better assist attorneys with filings and exhibits, eLaw has become an increasingly important aspect of the Attorney General's Office. In fact, many courts now require that exhibits and other presentations be sent electronically, and some courts mandate court documents be electronically filed. To meet these needs, the IT staff accomplished the following:

- Developed over 1,200 custom applications tailoring them to legal documents, including templates for court documents in all jurisdictional venues.
- Assisted in trial preparation and other litigation support activities such as database development for document production.
- Held classes to train and educate 220 Department of Law attorneys.
- Maintained timekeeping, docketing, case management system.
- Developed policies and procedures for e-filing of documents with state and federal courts.
- Arranged for training sessions by the court administrators to inform legal staff of new electronic courtroom and e-filing requirements.

*eLaw has become  
an increasingly  
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General's Office.*

## Keyless Entry

To ensure a safe working environment, this year, the Department of Law implemented a keyless entry system. This project, several years in the making, has significantly improved building security.

## Moot Court Room

In an effort to further prepare attorneys for trials, this year, the Department established a new, innovative “moot” Courtroom facility. The Courtroom, which has proved particularly helpful for attorneys making electronic



Attorney General Suthers speaks to students at the University of Colorado Law School.

presentations, is used for “moot” trials and other courtroom practice situations.

*Despite a relatively small budget, the Department of Law continued to cut travel costs.*

## Document Storage and Destruction

Given the large quantities of documents produced by the Department of Law, a document storage and destruction program was initiated this year. Storage capacity is a valuable commodity for any legal team and tremendous cost savings have already been realized by destroying unnecessary documents. Already, the document management policies implemented in 2005 have significantly enhanced the Department's management of electronic documents.

## Continued Success of Departmental Travel Management Program

Despite a relatively small budget, the Department of Law continued to cut travel costs. By eliminating the use of travel agencies, the Department has realized tremendous cost savings and has prompted the State Auditor's Office to highlight and recommend the Department of Law's program to other state departments.



## Security of Data and System Reliability

In addition to the eLaw activities, the Department maintains the highest level of information security to protect the confidential information inherent in the practice of law. This is especially critical in the systems involving criminal investigations that are required by statute to be held in a high security environment. In 2005, the Department initiated and managed a wiring upgrade in the State Services Building to improve the security of the Department's data and facilitate the seamless

operation of law-related software and updates. The upgraded security measures implemented and maintained by the Department have enabled a stable IT environment with none of the system intrusions and outages experienced by many other departments in previous years. Between these distinctive security measures and the emphasis on eLaw, the Department's Information Technology group is unique in the state.



Colorado's State Capitol Building

# APPELLATE DIVISION

## Upholding Criminal Convictions in Appellate Courts

*The Attorney General's Office represented Colorado in 950 new criminal appellate cases in 2005.*



The Colorado Attorney General's Appellate Division, led by John Krause, is responsible for appearing in state and federal courts to defend the State against appeals filed by defendants seeking reversals of felony convictions and sentences obtained by district attorneys throughout the State.

In 2005, the Appellate Division handled approximately 950 new criminal appellate cases. The convictions in these cases, many of which included conviction of more than one crime, included:

165	homicides
74	aggravated robberies
66	sexual assaults on adults
129	kidnappings and assaults
178	assaults or sexual assaults against children
136	drug felonies
127	burglaries and thefts
216	other felonies

## U.S Supreme Court Rulings Impacting Appellate Work

*CRAWFORD stated that cross-examination is now necessary for any out-of-court "testimonial statement" to be admitted in a criminal trial.*

Much of the work in Appellate this past year necessarily related to clarification of the impact of two landmark opinions issued in 2004 by the United States Supreme Court:

- (1) *Crawford v. Washington*, in which the Court imposed a requirement of in-court face-to-face confrontation/cross-examination in many situations where out-of-court statements had previously sufficed.
- (2) *Blakely v. Washington*, in which the Court required a jury finding for any fact a trial judge uses to increase ("aggravate") a defendant's sentence.



## CRAWFORD

The United State Supreme Court's decision in *Crawford v. Washington* stated that cross-examination is now necessary for any out-of-court "testimonial statement" to be admitted in a criminal trial. However, it deliberately declined to define what a testimonial statement was. Given that this lack of definition could only spawn uncertainty and confusion in the state's trial courts, the Appellate Division has continued to: (1) educate the state's district attorneys on the impact of *Crawford*, including a presentation at the Colorado District Attorney's Council (CDAC) annual Fall Training conference on "Prosecuting in the *Crawford* Era"; and (2) seek supplemental briefing and certiorari review of *Crawford* issues, thus attempting to clarify as quickly as possible for the trial courts throughout the state what out-of-court statements should be considered "testimonial." In seeking that clarification, we have had good success in keeping the definition narrow, and therefore minimizing the impact – both fiscal and otherwise – on criminal prosecutions, as can be seen in the following:

Prosecutors most feared *Crawford*'s impact on trials involving victims of domestic violence and child sex assaults, who are often reluctant to testify. In *Compan*, the Colorado Supreme Court concurred with the Attorney General's Office that the excited utterances of a domestic violence victim were "not testimonial" and therefore not subject to *Crawford*'s requirement. When Appellate lost a child sex-assault case on *Crawford* grounds in the court of appeals, we successfully sought certiorari review in the Colorado Supreme Court, and won an important reversal (*People v. Vigil*).

In other *Crawford* cases, the Attorney General's Office successfully argued that laboratory reports could be admitted without having the laboratory technician present at trial for cross-examination, and that cross-examination was not necessary for a crime victim's excited utterances to a police officer to be admissible.

## Blakely

Soon after *Blakely v. Washington* was announced, many criminal law practitioners predicted that Colorado's sentencing scheme would be declared unconstitutional. The Appellate Division thwarted that prediction in the first major battle in the *Blakely* war, *Lopez v. People* in which the Colorado Supreme Court ruled that *Blakely* did not render Colorado's sentencing scheme unconstitutional. While the decision in *Lopez* was pending, the Appellate Division was losing *Blakely* cases in the state court of appeals, but chose to challenge each of those losses. As a result, on October 11, 2005, the Supreme Court granted requests for certiorari review in nine cases involving *Blakely* issues. In four of those nine cases, the Supreme Court vacated the court of appeals judgment without any further briefing from the parties. Appellate attorneys are now working on the briefs in the other five cases. Later in 2006, these cases will be decided and the impact of *Blakely* on sentencing in Colorado will be better understood. In the meantime, the Appellate Division will continue to advise the state's district attorneys on how to proceed in protecting the right to seek and obtain aggravated range sentences for criminals who deserve them. Here, as with *Crawford*, the Appellate Division provided both informal advice and formal presentations at the CDAC training sessions.

## Significant State Appellate Court Rulings

*People v. Moses and People v. Medina* – In these companion cases, the Colorado Supreme Court held that the practice of allowing jurors to ask witnesses questions through the court does not violate a defendant's constitutional right to a fair trial and an impartial jury. These decisions uphold the constitutional validity of a rule that **permits jurors to ask witnesses questions in criminal trials**.

*People v. Robbins* – The state Supreme Court approved the common law doctrine of **laches in a criminal case**. This decision will be useful in defeating extremely stale collateral attacks in class one felony cases that are outside the scope of 16-5-402.

*People v. Gary L. Liggett* – An issue of first impression that clarifies the law pertaining to when it is permissible to question a defendant regarding the **veracity of other witness** may be allowed.

*Woellhaf v. People* – This decision sets forth the test for determining when a defendant may be simultaneously prosecuted for **distinct offenses under the child sexual assault statutes**, providing prosecutors with valuable guidance in charging, investigating, and trying child sexual assault cases.

*People v. Abiodun* – This opinion sets forth the test for when a defendant may be simultaneously prosecuted for **distinct offenses under the drug offense statute** (such as possession and distribution).

*People v. García* – The Supreme Court held that insulin-induced hypoglycemia may, depending upon the particular facts and circumstances, constitute the affirmative defense of **involuntary intoxication**.

*People v. Miller* – The Supreme Court settled the conflict in its prior cases regarding the **standard of review** to be applied to errors of constitutional dimension when the defendant fails to object at trial. Appellate had long sought this clarification, which is favorable to the prosecution.

*People v. Perea* – A useful opinion in which the court of appeals held that, for a conviction under a possession of a controlled substance statute, the prosecution only has **to prove** that the defendant knew he or she possessed a controlled substance, and not that he or she knew the identity of the substance possessed.



# CRIMINAL JUSTICE

## Protecting Colorado Citizens

Under the leadership of Deputy Attorney General Jeanne Smith, the Attorney General's Criminal Justice Section assists local prosecutors and law enforcement agencies throughout the state on matters that occur in more than one local jurisdiction, including presenting cases to the statewide grand jury, and serving as special district attorneys as requested. They provide special assistance to district attorneys in death penalty and gang activity cases as well as administer the Peace Officer Standards and Training Board, and provide services to the victims of criminal cases on appeal and of crimes being prosecuted by the Attorney General's office. The Criminal Justice Section coordinates the prosecution of foreign fugitives and represents the Department of Public Safety including the State Patrol, Colorado Bureau of Investigation, and the Division of Criminal Justice. They also have statutory authority to prosecute criminal white collar crimes and multi-jurisdictional matters, including Medicaid, workers' compensation, insurance, tax, election, securities fraud, and environmental crimes.

*Thanks to the Attorney General's Criminal Justice Fraud Units, restitution of about \$5.5 million was ordered to be paid back from convicted defendants.*

## Criminal Justice Fraud Units

Restitution of about \$5.5 million was ordered to be repaid as a result of the combined efforts of the Medicaid Fraud (\$1,306,630), Securities Fraud (\$3,980,639), Workers' Compensation Fraud (\$87,259) and Insurance Fraud (\$54,823).



Attorney General Suthers speaks at a public forum

## Medicaid Fraud

Approximately 446,000 Colorado citizens were recipients of Medicaid benefits in 2005. The State distributed \$3.5 billion to persons qualifying for aid. The Medicaid Fraud unit preserves this fund for those in need by protecting it against fraud, investigating and prosecuting complaints of neglect and abuse. Two attorneys, eight investigators, and one support staff employee accomplish the work of the unit.

In 2005, the unit **opened 30 new investigations** including spurious home health care claims, crimes against at-risk adults, and billing fraud.

**Ten criminal convictions were obtained and paid recoveries totaled \$1,306,630.**

Convictions included a former nursing home social services director who was convicted of Attempted Theft from an At-Risk Adult for trying to bilk real estate ownership from a nursing home resident and a contractor who was billing Medicaid for home construction for disabled persons that was never performed. The unit also works closely with federal and other state authorities on broad-ranging fraud rings that cover multiple jurisdictions.

## Securities Fraud

Under C.R.S. 11-51-603, the Attorney General is authorized to prosecute securities fraud. To accomplish this, the office works closely with the Colorado Division of Securities and other law enforcement agencies around the state.

In August of 2005, two investigators were added to the staff of the unit, consisting of two attorneys and a paralegal dedicated full-time to securities fraud cases. In 2005, **17 new investigations** were opened to look into fraudulent schemes in multiple judicial districts across the state.

Using the state-wide grand jury as well as grand juries in individual jurisdictions, **five indictments were obtained** against defendants alleged to have committed fraud.

**Nearly \$4 million has been ordered as restitution to victims this year from convicted defendants.**





## Insurance Fraud

National estimates suggest that 10 cents of every dollar paid in insurance claims is fraudulently obtained. These costs are passed on to the consumer. In an effort to combat this problem, the Insurance Fraud Program was created through industry funding to support fraud prosecutions. At present, one attorney, one investigator and a half-time support employee handle cases referred by the Division of Insurance, industry associations, and other law enforcement agencies.

### Notable Accomplishments:

In 2005, 343 referrals were received; sixty-five percent involved property-casualty claims with health, life, title, and other insurance types comprising the remainder.

- Seventy new investigations were opened;
- Ten felony convictions; \$54,822 ordered in restitution.

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## Fighting the Scourge of Methamphetamine



The rampant methamphetamine problem in Colorado was apparent in the nature of the fraud cases. Auto theft rings, for example, established to support drug habits, have become commonplace. To combat the scourge of methamphetamine, the district attorneys, led by Attorney General Suthers, have made fighting methamphetamine in our communities a top priority.

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## Workers' Compensation

As with any insurance program, there are ample opportunities for fraud. Pinnacol Assurance, the largest provider in the state, supports a fraud prosecution unit in the Attorney General's office consisting of one attorney, one investigator, and a half-time paralegal. Last year, this **unit obtained convictions on 17 defendants who were ordered to pay \$87,258 in restitution.**

Seventeen new investigations were opened this year resulting in 7 new case filings. Perhaps the most notable investigation culminated in grand jury indictments on three defendants for forging multiple certificates of insurance coverage in the operation of their temporary employment agency. The defendants were charged with over 100 criminal counts including violations of the Colorado Organized Crime Control Act.

## Department of Public Safety

One attorney is responsible for representing the Department of Public Safety which includes the Colorado Bureau of Investigation, the Colorado State Patrol, the Division of Criminal Justice, and the Department of Fire Safety and

Homeland Security. This attorney provides legal advice on all matters affecting those entities including contract review, personnel issues, drafting and implementation of regulations, and court proceedings.

*The Foreign Prosecutions Unit intervenes when foreign nationals commit serious crimes in Colorado and flee the country.*

## Foreign Prosecutions

The Foreign Prosecutions Unit intervenes when foreign nationals commit serious crimes in Colorado and flee the country. Proceedings are handled solely based on reports submitted by law enforcement agencies here in the United States. With the dedication of a single investigator, the Attorney General's office has developed expertise in compiling the necessary documentation and has formed

relationships with foreign officials to facilitate these prosecutions. In 2005, a Larimer County murder fugitive, Manuel Enrique Muela-Luna, was sentenced to twenty-seven years and six months in a Mexican federal prison for the murder of an eighteen-year-old man in 1992. In addition, assistance was provided on nine cases which are in various stages of processing between Colorado and Mexico.

Since its creation in 2001, the Foreign Prosecutions unit has assisted with the successful prosecutions of five homicide fugitives who were convicted and sentenced to Mexican federal prisons for a total of 114.5 years. To date, their work has saved the State nearly \$7 million in incarceration costs.



Entrance to PGR—Federal Attorney General's Office in Mexico City, Mexico



## Special Prosecutions

The Attorney General has statutory authority to prosecute certain types of crime including environmental violations, tax evasion, election fraud, and other types of fraud. In addition, the Attorney General functions as the legal advisor to the state-wide grand jury which allows for the prosecution of criminal cases occurring over multiple judicial districts in Colorado. The Special Prosecutions unit, comprised of four attorneys, two investigators, and one support staff employee handle all multiple jurisdiction matters as well as special investigations that may be referred by other state agencies or the governor. The attorneys prosecute cases throughout Colorado under the auspices of the Attorney General and as specially appointed deputy district attorneys in the twenty-two judicial districts.

### **SIGNIFICANT ACHIEVEMENTS IN 2005 INCLUDED:**

- Assisted in the prosecution of two major gangs, the Viet Pride in Jefferson County and the 211 crew in Denver, for a variety of criminal activity, including conspiracy to commit first degree murder.
- Assisted in the prosecution of a husband-wife team. She was sentenced to 17 years, and he was sentenced to 29 years for crimes related to stealing over one hundred credit cards. Identity theft, which is a major focus for prosecutions in this unit, is often accompanied by drug possession and distribution.
- Assisted in the investigation of a defendant in Trinidad for alleged dumping of sewage waste on land adjacent to the Purgatoire River
- Discovered and investigated hazardous asbestos being improperly handled in a building belonging to a service club and used for social events.

*The Special Prosecutions Unit Assisted in the prosecution of two major gangs, the Viet Pride in Jefferson County and the 211 crew in Denver, for a variety of criminal activity, including conspiracy to commit first degree murder.*



## P.O.S.T. Board: Supporting Law Enforcement Through Training and Legal Action

The Colorado Peace Officer Standards and Training (P.O.S.T.) Board establishes and maintains standards for peace officer training and certification. The P.O.S.T. Board, chaired by Attorney General John Suthers, oversees 14,000 law enforcement officers and functions under the direction of Executive Director John Kammerzell.



P.O.S.T. Board Officer Testing



John Kammerzell,  
P.O.S.T. Executive Director

## P.O.S.T. Board: Year in Review

- Trained and certified 1,061 peace officers and numerous reserve peace officers appointed by Colorado law enforcement agencies.
- Completed a major revision of the P.O.S.T. Basic Academic Training Program, revising and updating the curriculum to establish the highest possible standard of academic training for students pursuing Colorado P.O.S.T. peace officer certification.
- Revised and implemented the P.O.S.T. Certification Examination.
- Administered grants totaling \$800,000 for Colorado peace officer training for the period July 1, 2005 through June 30, 2006. Ten training regions, made up primarily of judicial districts, have been established to manage peace officer training programs unique to and needed in the region.
- Of the state's 302 active law enforcement agencies, 253 agencies have taken advantage of the P.O.S.T. training programs.
- Thanks to the P.O.S.T. Peace Officer Training Project, 6,134 peace officers have attended 96,882 hours of quality law enforcement training.
- Seventy different training topic areas and 118 curriculums have been developed and approved as a result of this project.
- Continued a partnership with the Anti Defamation League to offer the "ADL/P.O.S.T. Anti-Bias Training for Law Enforcement Officers" program to Colorado law enforcement officers. This project meets the peace officer training requirements of § 24-31-309(c)(5); provides the training at no cost to the state's law enforcement agencies; and, is funded through a United States District Court award to P.O.S.T. The training, coupled with P.O.S.T. approved agency training programs, began in 2002 and has now been provided to over 9,000 law enforcement officers.



## Victim Assistance Program

The Victims Assistance Program falls under the Criminal Justice Section and provides victims with community resources and counseling to help them cope with incidents of violent crime. A victim assistance coordinator heads this program, acting as a liaison for the Department of Law to the statewide network of victim services.

### Accomplishments in 2005:

- Provided notifications to 1,576 victims of violent crimes while the convictions and sentences in the offenders' cases were on appeal.
- Provided these victims with post-trauma counseling, referrals to Victim Compensation and other community resources, and accompaniment to oral argument in the Colorado Court of Appeals and the Colorado Supreme Court.
- Represented the Office of the Attorney General on statewide task forces concerning human trafficking, post-sentencing victim services, district attorney victim witness coordinators, victim rights legislative working groups, and other initiatives that convene to improve services to crime victims.
- Mentors and provides training on sexual assault, stalking and domestic violence.

*The Victims Assistance Program provides victims with community resources and counseling to help them cope with incidents of violent crime.*

## Capital Crimes Unit

The Capital Crimes Unit assists local prosecutors throughout Colorado on homicides that are, or could become, death penalty cases. Since these cases are complex and require extraordinary resources, two attorneys, one investigator and one administrative assistant provide investigative, legal, and technical support for District Attorneys who request assistance. In 2005, the Unit devoted considerable efforts to the case of Edward Montour, who pled guilty to killing a prison guard. Mr. Montour received the death sentence and his case is currently on appeal.

*The Colorado Attorney General's Office protects Colorado consumers and businesses against fraud and maintains a competitive business environment.*

# CONSUMER PROTECTION

## PROTECTING COLORADO'S CONSUMERS AND BUSINESSES

Jan Zavislan and a team of dedicated staff protect Colorado consumers and businesses against fraud and maintain a competitive business environment by:

- (1) enforcing state and federal consumer protection laws;
- (2) enforcing state and federal antitrust laws;
- (3) enforcing state laws on consumer lending, predatory lending, debt collection, rent-to-own, and credit repair;
- (4) educating consumers through outreach and educational programs;
- (5) implementing and enforcing

provisions of the tobacco master settlement agreements; and

- (6) advocating for residential, small business and agricultural public utility ratepayers.

The Consumer Protection Section is comprised of three distinct work units: Business Regulation (consumer protection, antitrust, and tobacco enforcement), UCCC/CAB (consumer lending and debt collection), and OCC (representing the Office of Consumer Counsel). Together, the thirty-three women and men in the Section accomplished a great deal in 2005.

## Business Regulation

The Business Regulation Unit within the Consumer Protection Section enforces a variety of state and federal consumer protection statutes. To maximize limited resources, the Section also engages in significant consumer education and outreach efforts. The principal statutory authority for enforcement efforts is the Colorado Consumer Protection Act, which identifies and prohibits a

long list of deceptive trade practices. In recent years, this statute has been amended to include enforcement of a comprehensive sweepstakes law, the Colorado Charitable Solicitations Act, the Colorado No-Call List Act, and the Colorado law addressing the facilitation of unconscionable mortgage loans.



## No-Call Enforcement

Since going into effect on July 1, 2002, over 2.3 million Coloradans have added their residential phone numbers to the Colorado No-Call List. Since that time, consumers have filed over 41,300 complaints alleging violations of the No-Call List Act. Enforcement efforts have been extremely successful, with the daily average number of **complaints dropping from 206 complaints per day in the first month of the program to 12 per day by December 31, 2005.**



Highlights of enforcement activities since the No-Call Act went into effect include:

- **Issued 291 Cease-and-Desist Notices** to companies who violated the No-Call Law. One hundred and eighty-four were to out-of-state businesses and one hundred and seven were to Colorado companies.
- **Entered into 18 Assurances of Discontinuance** with companies that continued to violate the No-Call Act after they had been issued Cease-and-Desist Notices. The Attorney General's Office assessed \$88,500 in fines in these cases to deter future violations.
- **Filed three lawsuits** against companies that continued to violate the law after contact by the Attorney General's Office. The cases were settled with permanent injunctions against all three out-of-state businesses and penalties and costs of \$41,000.
- In 2005, all Colorado telephone registrations were incorporated into the federal Do-Not-Call registry to ensure protection on both a state and national level. Colorado consumers may now file complaints with both the state and federal authorities.

*The Attorney General's Office filed lawsuits against companies that continued to violate the no-call law and settled with permanent injunctions with penalties and costs of \$41,000.*

## Colorado Consumer Line

Continued working with Colorado's Better Business Bureaus ("BBBs") to help Coloradans resolve consumer complaints, improve consumer services, and obtain greater access to information regarding businesses. This project, known as the Colorado Consumer Line ("CCL"), includes a toll-free number that gives consumers one-stop access to consumer advocates, information on filing consumer complaints, answers to some frequently asked questions, and referrals to the BBBs for complaint mediation and business reliability reports



### CCL/BBB system statistics for 2005:

- 1,384,522 BBB "business reliability reports" were requested over the phone and through the Intranet;
- Approximately 58,729 consumer calls were made to the CCL;
- More than 15,661 consumer complaints against businesses were resolved or closed;
- More than 4,894 callers accessed the CCL's "frequently asked questions" assistance features.

*More than 15,661 consumer complaints against businesses were resolved or closed.*

## AARP ElderWatch

AARP ElderWatch is a joint effort between the Attorney General and the AARP foundation to establish a statewide clearinghouse to address the financial exploitation of Colorado's senior citizens. Efforts in 2005 focused on investor education and financial literacy training for older adults. The Attorney General, AARP ElderWatch, and the Colorado Division of Securities worked to develop curriculum for a series of programs for seniors to be held in mid-2005 and 2006.



**A Program with the  
Colorado Attorney General  
and the AARP Foundation**

**Toll Free in Colorado: 1-800-222-4444  
Metro Denver 303-222-4444  
Hours of Operation: 9 am - 4 pm**



## Preventing Identity Theft

Continued and updated the comprehensive informational web page for Colorado consumers, businesses, and law enforcement agencies to deal with identity theft. The Attorney General's Office undertook a number of initiatives in 2005 designed primarily to educate the public on the risks and dangers of identity theft. Some of these initiatives included:

- As part of National Consumer Protection Week, the Attorney General issued a general warning to consumers to be on the lookout for a series of new Internet e-mail scams designed to steal important personal information. These scams were identified as “phishing” and “pharming,” and both are designed to mislead or misdirect consumers to phony Internet sites where a variety of schemes are used to obtain personal or financial information.
- The Attorney General advised consumers of a possible security breach at DSW Shoe Warehouse stores that compromised credit card and other personal information on DSW customers. The Attorney General called on DSW to immediately contact each Colorado consumer that were affected, to inform them of the breach, and urge them to review their credit card accounts and credit reports for suspicious activity.
- The Attorney General advised LexisNexis customers of a security breach involving the company's subsidiary, Seisint. The incident involved individuals who gained access to personal information of legitimate Seisint customers. In a letter to the Attorney General, LexisNexis noted that it was contacting the 32,000 customers impacted around the country. According to LexisNexis, 263 customers in Colorado had been affected.
- The Attorney General co-hosted, with AARP ElderWatch, an event designed to encourage seniors to be careful with documents containing personal or financial information. Called “Fight Fraud – Shred Instead,” the event attracted numerous seniors who were given the opportunity to dispose of old paperwork in two giant portable paper shredders.
- Consumer protection attorneys spoke to various groups during the year on identity theft issues, including detection and prevention and on remedying the effects of identity theft.



WWW.AGO.STATE.CO.US/IDTHEFT/IDTHEFT.CFM

## Mortgage and Foreclosure Fraud

Concerned about the rise in the number of complaints about mortgage and foreclosure fraud, the Attorney General convened a meeting of law enforcement, county officials (Public Trustees and Clerks and Recorders), mortgage lenders, mortgage brokers, real estate attorneys, and others. Participants shared their experiences with this growing problem and discussed coordinated solutions. As a result of that meeting, the Attorney General announced in July 2005, the formation of a Mortgage & Foreclosure Fraud Task Force. Aside from a public outreach effort, a legislative initiative was designed to address the most egregious foreclosure-related scams.

**The Attorney General also has commenced a number of investigations into mortgage and foreclosure-related fraud, including:**



- An investigation into allegations that a Colorado company selling properties using installment land contracts was misrepresenting the nature of the contracts and the ability of consumers to obtain financing.
- An investigation into allegations that a Colorado mortgage company has engaged in deceptive conduct in connection with the advertising of certain option ARM mortgages.
- An investigation into a foreclosure rescue program that is being marketed over local radio and the Internet.
- An investigation into a mortgage company alleged to be sending out fake "Deeds of Trusts" in order to drum up mortgage business.
- The Office is also reviewing a large number of complaints concerning alleged mortgage fraud and alleged predatory lending practices in connection with the announcement of the Mortgage Foreclosure Fraud Task Force. These complaints are being reviewed to look for patterns of alleged misconduct.



## Estate Planning Fraud

The Attorney General's Office has continued to pursue collection of a February 2004 monetary judgment totaling more than \$3 million against a Colorado Springs attorney and his "associate" for their deceptive trade practices in the promotion and sale of a "Family Asset Protection Plan" and similar "estate planning" products, which the attorney and two other defendants falsely claimed would allow seniors to maintain their assets while qualifying for Medicare. The judgment included

over \$1.6 million in restitution to injured elderly consumers and over \$1.3 million in civil penalties. After both Defendants filed for bankruptcy, the Office obtained an order of non-dischargeability from the Bankruptcy Court against Defendant Mason. Defendant Page's bankruptcy petition was eventually dismissed. The Office is actively trying to identify assets of both Defendants in order to collect on the judgment against them.

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## Corporate Responsibility

**Janus and Invesco** – Under settlement agreements reached in 2004, the Attorney General's Office continued to review compliance activities of mutual fund companies Janus and Invesco (now AIM).

**Marsh & McLennan** – The Consumer protection staff searched and reviewed over 2 million hard copy and electronic documents in connection with the review of alleged deceptive and anticompetitive conduct by Marsh & McLennan, the nation's largest insurance broker. Marsh was alleged to have taken kickbacks to steer clients to particular insurance companies. They were also alleged to have facilitated bid rigging as part of that kickback scheme. The Attorney General's Office investigated the scope of the alleged misconduct and its impact on Colorado entities that used this broker to analyze its insurance needs and obtain competitive bids for public insurance needs. The office provided assistance to state and local governments evaluating a nationwide settlement offer from Marsh.

**General Steel** – In December 2004, following an 8-day trial that fall, the Court entered judgment against a Colorado-based steel building company, finding that the defendants had engaged in a knowing and intentional pattern of deceptive sales practices. The trial Court ordered the parties to commence Phase II of the litigation in August 2005 to determine how many of General Steel's 7,000 customers may be entitled to restitution from the company based on the Court's findings of numerous violations of the Colorado Consumer Protection Act.

## Charitable Solicitations

The Attorney General undertook a number of initiatives to enforce the Charitable Solicitations Act, including:

- Investigations into fundraising activities by several area groups claiming to be legitimate charities.
- Investigations into fundraising activities of several large national paid solicitors for a variety of potential violations, including unregistered solicitation campaigns, misrepresentations as to affiliation, misrepresentations as to charitable purpose, and failures to file campaign finance reports.
- Several media advisories alerting consumers about charitable giving following natural disasters and charitable giving during the holidays.
- Participated in two press conferences with Colorado Secretary of State announcing results of 2005 charitable campaigns in Colorado and providing consumers with tips on charitable giving during the holidays.

### Coloradans giving more, getting less from charitable gifts

By STEVEN K. PAULSON  
Associated Press Writer

DENVER (AP) — Coloradans are giving more and getting less from their charitable donations, a sign they should be paying more attention to the organizations that are getting their money, the secretary of state and attorney general said Wednesday.

This year, donors contributed \$164 million, up from \$96 million last year, according to the secretary of state's office. But the average percentage that went to charities after expenses were paid dropped from 55 percent to 47 percent — less than 50 cents on the dollar.

State officials blamed the decrease on charities that rely on paid solicitors. They said some organizations, including police and veterans groups, use solicitors knowing they will at least get some of the money.

"Despite public education efforts, there are still too many people who give on the basis of the heartstrings that are touched," Attorney General John Suthers said.

Suthers said people should not donate to telephone solicitors, and they should ask people who ask for money how much of it actually goes to the charity. The state is barred from setting limits on the amount of money that can go to

administrative costs because of recent U.S. Supreme Court decisions.

Secretary of State Gigi Dennis said 3,829 charities have registered with her office. She said the majority are doing a good job, but they suffer because of problems caused by a few organizations.

Jean Herman, spokeswoman for the Denver/Boulder Better Business Bureau, said 99 percent of the registered charities are doing a good job.

"Unfortunately, the regulations deal with the 1 percent who do not," she said.

Suthers said five charities are being investigated, but he declined to say which ones.

The campaign with the highest gross, on behalf of Paralyzed Veterans of America, totaled \$64 million. Of that amount, \$40 million went to the charity.

Charley Shimanski, president of the Colorado Nonprofit Association, said records kept by the state can be misleading because some charities pay their administrative costs up front for multiyear campaigns. He said that ends up giving them a poor ranking by the state, even though some have good reputations.

"One of our concerns is that contributors will take this to mean that all charities use paid solicitors, when in fact, few charities do," he said.

## Discount Health Plans

In June 2005, the Office began working with the Colorado Division of Insurance on a number of issues concerning discount health plans. Several significant initiatives are under way, including:

- Streamlining the exchange of information and referrals between the Division of Insurance and the Attorney General's Office.
- Updating consumer education brochures (English and Spanish) to explain the differences between discount health plans and traditional health insurance, including specific disclosures required of discount health plans, and warning signs of typical fraudulent solicitations.
- Ongoing investigations of several discount health plans operating in Colorado looking at failures to provide statutory disclosures, false representations, and other deceptive trade practices.

*The Attorney General's Office conducted ongoing investigations of discount health plans looking at deceptive trade practices.*



## Elder Fraud

Filed a lawsuit in August of 2005 alleging numerous violations of the Colorado Consumer Protection Act in connection with Defendant's alleged fraud in obtaining title to a property owned free and clear by a then 77-year-old developmentally disabled gentleman. Defendant allegedly used the property as collateral to obtain \$135,000 in personal loans.

*An Elder Fraud defendant allegedly obtained title to a 77-year-old developmentally disabled man.*

## False Advertising/Sales

Filed a lawsuit in November against Morphcorp LLC, a Parker, Colorado company, as well as the company's president and general manager, Maxwell MacMaster, for alleged deceptive advertising and sales of "Family Yearbooks. The lawsuit alleges that Morphcorp marketed the "Family Yearbook" as a product of genealogical research that was unique to the consumer's family history. Yet, as the lawsuit alleges, Morphcorp does not conduct any genealogical research specific to the family before

Yearbook. In fact, much of the same information, including "family jokes and recipes" and family pictures appear in each Yearbook regardless of the surname for which it was created. The lawsuit alleges that MacMaster offered the Yearbooks through direct-mail advertising, which included various false and misleading statements.

2005 SUITS FILED IN NOVEMBER 2005

## Colorado sues family-history yearbook seller

Direct-mail firm MorphCorp accused of genealogy 'scam'

By John Accola  
ROCKY MOUNTAIN NEWS

An Arapahoe County company that uses a massive direct-mail campaign to sell family-history books is the target of a consumer protection complaint brought by the state's attorney general.

Maxwell MacMaster and his Park-based company, MorphCorp LLC, are being sued for allegedly using deceptive advertising to sell thousands of Family Yearbooks to unsuspecting consumers in Colorado throughout the country.

"To bottom," Bernardi lists the doggy Hall of blacksheep.

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ay General John says the year-unique and are in-ve. His complaint, Arapahoe County describes their con-re than a regurgita-records and phone asily available for free net.

le information remains gardless of the surname

for which the 'yearbook' is created," the complaint says.

No one was answering the phones Wednesday at MorphCorp, 1181 S. Parker Road., and messages left with the company's answering service were not returned. MorphCorp's outside counsel, Burton Wherry, was unavailable, his office assistant said.

The company, which sends out 250,000 direct-mail fliers a year, has been widely ridiculed for years by amateur and professional genealogists.

"The historical material is so general as to be almost useless, and no ancestral or family connections are mentioned," said former customer Anne Goddard Jones in a just-posted warning to a Goddard families Web site.

The attorney general's complaint says MacMaster directs the company's ad campaign. In a typical year, MorphCorp publishes 50,000 yearbooks and newsletters, grossing "hundreds of thousands of dollars," the complaint says.

"Although the 'yearbooks' purport to summarize 2,000 years of a particular family's surname history... surnames were not even used until the 11th century at the earliest, not 2,000 years ago," the complaint states.

Suthers seeks a court order providing refunds to customers, civil penalties for violations of the Consumer Protection Act, attorney fees and costs. The suit also seeks an injunction preventing the defendants from engaging in any future false and deceptive advertising of merchandise.

accola@RockyMountainNews.com or 303-692-2666

## State sues genealogy company

"YEARBOOKS" CALLED A SCAM

The suit claims 150,000 people nationwide were swindled out of \$49.95 each when they bought a book with fake family histories from Morphcorp of Denver.

By Manny Gonzales  
Denver Post Staff Writer

For \$49.95, people who bought genealogical "yearbooks" from a Denver-based company got the same family coat of arms, the same family recipes and even the same family jokes, according to a law-

suit filed Wednesday. And it was a lucrative scam that swindled 150,000 people nationwide who bought into fake family histories, according to the civil suit filed by Colorado Attorney General John Suthers.

The suit, filed in Arapahoe County District Court against Maxwell MacMaster and his company, Morphcorp LLC, seeks to cease the operation and penalize him up to \$2,000 per book sold, which could amount to \$300 million.

"This is a guy who has been exploiting a natural human emotion, a curiosity about our family history... and he made a lot of money doing it," Suthers said. "People got a standard book that really reflects no individual genealogical research. The books come with a family (crest), but if your sur-

name is Jones it would be the same (crest) used if your last name was Smith."

MacMaster, who has residences listed in Denver and Kailua, Hawaii, was contacted about the suit but said he had not read the specific allegations and declined to comment. His lawyer could not be reached for comment.

Aurora resident Lynette Dahl is one of 21 alleged victims in Colorado. Dahl said her family purchased a yearbook a couple of years ago in hopes of learning more about where she came from, but what she got was "generic."

"They make it sound like you're going to get all this great information, but you get it and it's gener-

> See SUIT on 3B

## Working With Other State Attorneys General

Participated in settlements of national advertising issues affecting Colorado consumers, including the following actions:

- Participated in a \$40 million settlement with State Farm Mutual Automobile Insurance Company. The settlement came after an internal audit by State Farm revealed that it may have failed to properly re-title thousands of total-loss vehicles subsequently resold by State Farm. The settlement covered more than 250 vehicles in Colorado. Consumers were notified that their vehicle was covered by the settlement and a claims process was established by State Farm to pay out the settlement moneys.



- Participated in a consumer protection settlement agreement with Blockbuster Inc., over allegations that it deceived consumers in the advertising of its “No Late Fee” program beginning in late 2004. In Colorado, the program was in place in 121 company-owned stores and in 4 franchise stores. Blockbuster agreed to change its advertising and to make refunds or credits to consumers who filed a complaint.

- Participated in a consumer protection settlement with National Research Center for College and University Admissions (“NRCCUA”) concerning NRCCUA’s collection of personal information through high school student surveys. NRCCUA marketed its surveys through high school teachers and guidance counselors and on the Internet. The settlement directed significant changes in the way NRCCUA collects and uses personal information about students taking the survey.



- Participated in a multi-state settlement with Lyon Financial Services d/b/a U.S. Bancorp Business Equipment Finance Group (USB), and Wells Fargo Financial Leasing, Inc. (WFFL) in connection with a widespread telecommunications fraud perpetrated by NorVergence, Inc., a bankrupt New Jersey-based telephone equipment and service company. These leasing companies agreed to refund or not collect over \$15.2 million in rental payments from consumers.

*The Colorado Attorney General’s Office participated in a \$40 million settlement with State Farm Mutual Automobile Insurance Company.*



## Consumer Protection Achievements

- Credit Repair Fraud – Investigating complaints concerning the collection practices of a credit card company alleged to have issued credit cards as part of a credit repair scheme.
- Unauthorized credit card charges – Analyzing 1,300 complaints against a large local company to determine how many of the complaints deal with allegedly unauthorized charges to consumers' credit cards.
- Allegedly False Health Claims/Money Back Guarantee – Investigating companies selling products that claim to improve health. Reviewing money back guarantees once consumers were no longer able to get refunds.
- Consent Decree Compliance – Analyzing complaints against two companies that have entered into Consent Decrees with the Attorney General to determine if they are complying with the terms of such Consent Decrees.
- Student Travel – Investigating a company that sold college students spring break travel packages that the company then failed to provide.
- Door to Door Satellite TV Installation Sales – Investigating a satellite television installation company to determine if the company is providing mandatory notice to consumers concerning their 72-hour right to cancel under the law for door to door sales.

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## Legislation

Assisted the Colorado General Assembly on several pieces of consumer legislation, including:

- Legislation designed to conform Colorado law on sending unsolicited facsimile transmissions to the federal Telephone Consumer Protection Act.
- Legislation amending the Colorado Consumer Protection Act to include a prohibition on unfair pricing of drugs during a declared health emergency.
- Various pieces of legislation dealing with identity theft.

## National Consumer Issues

Participated in national discussions on other important consumer protection issues, including:

- Joined several amicus briefs challenging federal court rulings that National Bank Act and regulations adopted by the US Comptroller of the Currency preempted state regulation of national bank operating subsidiaries even when such subsidiaries are state-chartered corporations.
- Signed on to comments filed with the Federal Communications Commission arguing against the preemption of Colorado's No-Call List Act and other state no-call statutes.
- Signed on to a letter to the Federal Deposit Insurance Corporation on the issue of payday lending and the "rental" of federal bank charters in order to preempt state lending law.
- Signed on to comments in opposition to a FDIC proposal to preempt certain state lending laws.
- Signed on to comments to the Federal Communications Commission in favor of clear and conspicuous disclosures in wireless telephone bills.
- Joined an amicus brief challenging certain findings by the Federal Communications Commission that state consumer protection law was preempted by federal law on issues relating to advertising and billing disclosures by wireless telephone companies.
- Urged Congressional leaders to adopt a national law requiring notification of security breaches affecting consumers' personal or financial information and allowing consumers to place a security freeze on their individual credit reports and files.



The rugged mountains of the Maroon Bells-Snowmass Wilderness Area



## Consumer Education and Advisories

Given the sparse resources for investigations and prosecutions of consumer fraud issues, the Unit participates in a number of education and outreach efforts. These efforts are designed to educate the public about possible scams and to assist consumers in taking appropriate steps to avoid becoming a victim of consumer fraud. Some of these activities included:

- Colorado Attorney General and AARP ElderWatch issued an alert warning consumers about a gas voucher scam that is targeting Colorado residents, particularly seniors.
- Colorado Attorney General and the Colorado Secretary of State's Office advised citizens to beware of giving to fraudulent organizations that may claim to help citizens who have suffered loss from Hurricane Katrina.
- Joined with other state Attorneys General to launch the ESUVEE Safety Campaign, a \$27 million, yearlong national education program designed to reduce SUV rollovers, particularly among younger male drivers who have the highest incidence of such accidents.
- Colorado Attorney General and AARP ElderWatch issued a warning to older Coloradans to be aware of fraudulent or deceptive offers in connection with their enrollment into a Medicaid Part D prescription drug program.
- Issued a consumer advisory about First Pacific Corporation, an Oregon company that mailed collection notices to Colorado consumers despite a cease and desist advisory issued to the company earlier this year.
- Joined with 46 other state Attorneys General and Western Union Financial Services, Inc. to establish a national consumer fraud prevention program. Western Union will be contributing \$8.1 million to the AARP Foundation to help coordinate educational efforts directed at senior citizens who are being defrauded through phony telemarketing and direct mail schemes, primarily originating in foreign countries.
- Worked with AARP ElderWatch and the Colorado Division of Securities on programs to educate older investors about financial investments and specific scams and schemes directed at them.

# ANTITRUST – MAINTAINING A COMPETITIVE BUSINESS ENVIRONMENT

The Attorney General's Office enforces the Colorado Antitrust Act and the federal Sherman and Clayton Antitrust Acts. In addition to handling local cases, the Section also works closely with other state attorneys general in investigating and prosecuting national antitrust violations that have a particular impact on Colorado consumers. Efforts last year included the following activity:

## Defending the State

The Business Regulation Unit provides access to the State's electronic court assistance in those rare instances when records. The lawsuit, which asserted the State is alleged to have engaged in First Amendment, §1983, anticompetitive conduct. This past monopolization and tying claims, year, the Unit helped defend the Office among other things, was dismissed with of the State Court Administrator in an prejudice by the Plaintiff after two days antitrust/civil rights lawsuit against the of a preliminary injunction hearing in SCA and LexisNexis brought by a late December. company that lost the bid to provide

*The Attorney General's Office enforces the Colorado Antitrust Act and the federal Sherman and Clayton Antitrust Acts.*

## Putting Consumers First

- Participated in the settlement of a multi-state antitrust investigation into allegedly anticompetitive conduct that occurred in connection with Hearst Corporation's 1998 acquisition of Medi-Span, Inc., then one of the nation's leading providers of electronic drug information databases. At the time of the acquisition, Hearst also owned First DataBank, the other leading provider of these databases.
- Ongoing investigation of allegation of anticompetitive conduct in transportation construction industry.
- Ongoing investigation of allegation of bid-rigging impacting state agency.
- Ongoing investigation of alleged price fixing by third party payer in the health care industry.



## Prescription Drugs

A disproportionate amount of the antitrust resources continues to focus on the critical issue of competition in the prescription drug industry, specifically on agreements designed to delay the marketplace entry of low-cost generic alternatives to brand name pharmaceuticals.

Case activity during 2005 included:

- **Ovcon** – Filed a civil law enforcement action against drug companies Warner Chilcott Corporation and Barr Pharmaceuticals. The lawsuit, joined by twenty-one other states, charges both companies with antitrust violations that have prevented generic versions of Ovcon, a prescription oral contraceptive, from reaching the marketplace. The lawsuit alleges, among other things, that Warner Chilcott paid Barr \$20 million to keep Barr from marketing a generic version of Ovcon.
- **Taxol** – Distributed over \$70,000 to The Children's Hospital to benefit cancer victims or their families. This follows the distribution last year of over \$430,000 to Colorado consumers and government organizations whose claims were approved as part of the Attorney General's settlement of the state's antitrust lawsuit against Bristol-Myers Squibb regarding the anti-cancer drug, Taxol. These payments were part of the settlement of the state's claims for damages and penalties regarding allegedly anticompetitive conduct that delayed the availability of generic versions of Taxol, a drug used to treat cancer patients.
- **Hytrin** – Entered into an agreement to resolve the Office's antitrust litigation against Abbott Laboratories and Geneva Pharmaceuticals over allegations that the defendants conspired to delay the entry of an equivalent generic drug to Hytrin – a widely used hypertension medicine – onto the market. Under the terms of the settlement, the U.S. District Court overseeing the case ordered Geneva and Abbott to pay a combined \$200,000 civil penalty to the State of Colorado. According to allegations made in the states' lawsuits, Geneva received payments from Abbott in exchange for its agreement to delay entry of its generic version of Hytrin.
- **Mylan** – Awarded \$285,097 – Colorado's portion of the Mylan Antitrust Litigation residual funds – to the University of Colorado at Denver and Health Sciences Center to support the Population-Based Palliative Care Research Network, or "PoPCRN." This award is tied to the 1998 litigation by the Attorneys General of 33 states, including Colorado, against Mylan Laboratories, Inc. for violation of antitrust laws in connection with the sale of anti-anxiety, hypertension drugs, Lorazepam and Clorazepate. Among other things, the litigation alleged illegal agreements to monopolize the markets for these drugs, resulting in price increases of up to 3,000 percent.
- Participated in several other multi-state investigations involving allegations that drug manufacturers acted illegally to prevent generic equivalents from entering the market. Settlement negotiations with these potential defendants are ongoing.

## ENFORCING COLORADO'S RIGHTS UNDER TOBACCO SETTLEMENT AGREEMENTS

The Attorney General's Office is responsible for enforcing the Tobacco Master Settlement Agreement (MSA) and the Smokeless Tobacco Master Settlement Agreement entered into in 1998. The office also enforces the state escrow fund statute designed to prevent tobacco manufacturers that are not signatories to the historic tobacco settlements from taking advantage of marketing restrictions imposed by those settlements.

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### Non-Participating Manufacturer Enforcement

The Attorney General's Office is responsible for enforcing the Tobacco Escrow Funds Law. Failure to diligently enforce this law can have a significant detrimental impact on the payment of settlement funds under the MSA (which have totaled more than \$544 million to date). Enforcement in 2005 included:

- Initiating lawsuits to ban tobacco sales by non-participating manufacturers that violate the Tobacco Escrow Funds Law.
- In conjunction with Department of Revenue regulations, requiring quarterly escrow payments under the Tobacco Escrow Funds Law for new non-participating manufacturers and past non-compliant non-participating manufacturers.
- Entering into settlement agreements with non-participating manufacturers that violated the Tobacco Escrow Funds Law.

*Payment of  
settlement funds  
under the MSA  
have totaled more  
than \$544 million  
to date.*



## PROTECTING COLORADO'S YOUTH

Joined with other Attorneys General to enter into Assurances of Voluntary Compliance in order to curb sales of cigarettes to minors, including:

- Participated in a joint public/private initiative in conjunction with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), credit card companies and Attorneys General from across the country to prevent the illegal sale of cigarettes over the Internet.
- Entering into agreement with 7-Eleven, Inc. requiring the nation's largest seller of tobacco products to implement new procedures to prevent sales to minors at its 229 Colorado stores and 5,702 outlets in 40 other states and Washington, D.C. The agreement requires that 7-Eleven do the following at all company-owned stores:
  - Check the ID of any person purchasing tobacco products when the person appears to be under the age of 27, and accept only valid government-issued photo ID as proof of age.
  - Prohibit self-service displays of tobacco products, the use of vending machines to sell tobacco products, distribution of free samples, sale of cigarette look-alike products, and the sale of smoking paraphernalia to minors.
  - Hire an independent entity to conduct random compliance checks of 900 7-Eleven stores annually in the signing states.
  - Restrict in-store advertising of tobacco products adjacent to products popular with minors and outdoor and outward-facing advertising within 500 feet of schools and playgrounds.
  - Train employees on state and local laws and company policies regarding tobacco sales to minors, including explaining the health-related reasons for laws that restrict youth access to tobacco.

*The Attorney General's Office Entered into agreement with 7-Eleven, Inc. requiring the nation's largest seller of tobacco products to implement new procedures to prevent sales to minors at its 229 Colorado stores.*

**7-Eleven adopts strict tobacco rules**  
Colorado Attorney General John Suthers announced an agreement Thursday with 7-Eleven Inc. requiring the nation's largest seller of tobacco products to start new procedures to prevent sales to minors at its 229 Colorado stores and in 40 other states and Washington, D.C. Despite state laws that ban sales to minors, undercover inspections indicated that minors were able to buy tobacco products at 7-Eleven stores in several states. The agreement requires that 7-Eleven check the ID of any person purchasing tobacco products when the person appears to be under the age of 27; prohibit self-service displays of tobacco products; conduct random compliance checks; and restrict in-store advertising of tobacco.  
THE GAZETTE

## Legislation and Regulation

Provided background information in support of Department of Revenue regulations allowing the Department to require quarterly escrow payments from non-participating manufacturers

without a history of timely payments, making it easier to prevent sales from non-participating manufacturers attempting to avoid the Tobacco Escrow Funds Law.

*Consumer  
refunds and  
credits were  
ordered by the  
Attorney  
General's Office*

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## UNIFORM CONSUMER CREDIT CODE – PROTECTING COLORADO CITIZENS FROM UNFAIR CONSUMER CREDIT PRACTICES

The Section enforces five state credit-related laws – the Uniform Consumer Credit Code (consumer finance), which includes the Consumer Equity Protection Act (predatory lending), the Deferred Deposit Loan Act (payday lenders), the Fair Debt Collection Practices Act (collections), the Credit Services Organization Act (credit

repair), and the Rental Purchase Agreement Act (rent-to-own). In addition to enforcement activities, the Unit licenses and regulates finance companies under the Uniform Consumer Credit Code (“UCCC”) and collection agencies under the Colorado Fair Debt Collection Practices Act (“CFDCPA”).

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## Small Installment Lending

To comply with House Bill 04-1394, the Unit conducted compliance examinations of lenders licensed to make small installment loans. The first licenses for this lending were issued late in 2004 and the first round of compliance examinations under these new alternative finance charges occurred in 2005. Substantial

examination time was spent educating lenders on this law. Approximately \$2,300 in consumer refunds and credits was ordered. This will continue to remain an area for close monitoring as the next round of examinations will focus on refinances and related provisions.



## Lending Practices

The UCCC Unit supervises and regulates lenders in a narrow but significant part of the marketplace. As a general rule, consumer loans with finance charges in excess of 12 percent per annum, excluding non-depository lenders making first mortgage home and refinance loans, are covered by the UCCC.

Lenders regularly engaged in making such loans are required to be licensed and are subject to periodic examination. Some highlights for this Unit in 2005 include:

- Oversaw the activities of 2,260 supervised lenders and issued 736 new licenses. This is the first time in UCCC history that there have been over 2,000 licensed lenders. This growth trend has been strong with the total number of licensees doubling in the last five years. The increase from 2004 was 233 lenders. Of the supervised lenders, 1,435 (63%) are mortgage companies, 581 (26%) are payday lenders, and 212 (9%) are traditional finance companies. There were 22 lenders (1%) making small installment loans under a new law

that took effect in 2004. The remaining are lenders that solely finance insurance premiums for consumers.

- Conducted 635 compliance examinations of supervised lenders and ordered them to refund overcharges to Colorado consumers and take other corrective action, such as releasing collateral or mailing corrected disclosure notices.
- Investigated 253 written consumer complaints against licensed lenders and other creditors.
- Filed, litigated, or resolved 40 UCCC enforcement actions.
- Obtained from cases, compliance examinations, and complaint investigations \$2,449,739 in consumer refunds and restitution and over \$280,000 in penalties, fines, cost reimbursement, and custodial funds for credit education and enforcement purposes.

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## Internet Lending

Last year, the Unit investigated several cases involving out-of-state lenders that are not licensed and whose lending terms and practices do not comply with the UCCC. The majority of these cases involve Internet payday lenders. These cases and investigations ensure compliance with Colorado's laws that apply to loans made to Colorado consumers regardless of the lender's location. Some activities included:

- Investigated and resolved an Internet payday lending case with an out-of-state lender that was not licensed in Colorado and did not comply with Colorado's

payday lending laws. The lender agreed to refund \$2.5 million dollars in loan finance charges on over 15,000 loans made to Colorado consumers. Refund checks will be mailed to consumers in January 2006.

- Investigating two additional Internet payday lenders for possible violations of the UCCC, including making loans without a supervised lender's license, making loans in excess of the statutory interest rate cap, and making loans in excess of the statutory single renewal.

## Automobile Financing

Reviewed the following activities of automobile dealers and automobile financing businesses:

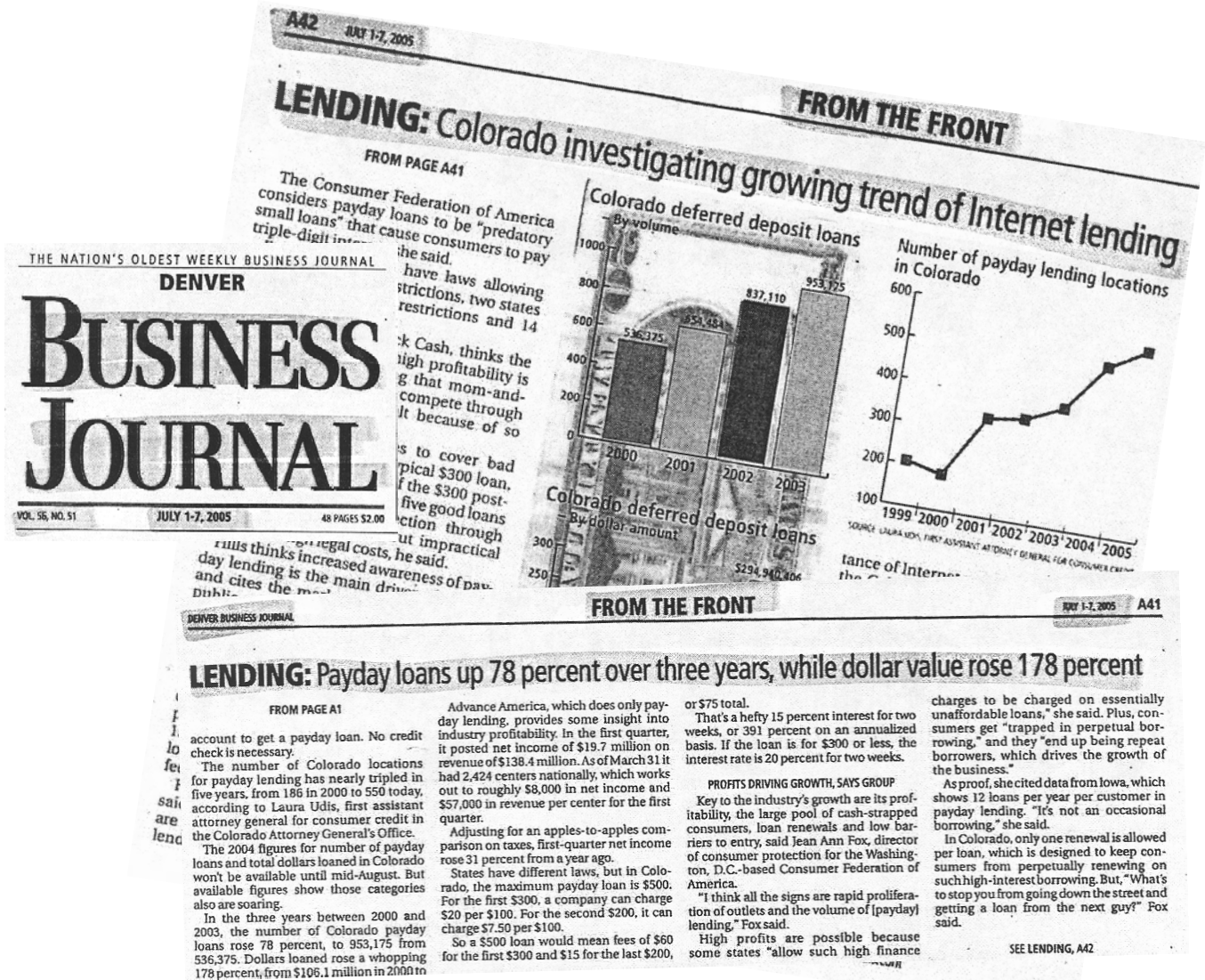
- Monitored an automobile dealer's compliance with a 2004 Consent Decree in which it agreed to make refunds and credits of almost \$1.1 million to consumers for excess financing charges.
- Investigated a company that services sub-prime automobile loans for potential UCCC violations, including allegations of improper collection and repossession activity.

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## Payday Lending

Undertook the following activities against payday lenders operating in Colorado:

- Signed an Assurance of Discontinuance with a formerly-licensed payday lender that continued to make and collect loans after its licenses expired. The lender agreed to refund more than \$775,000 in loan finance charges to consumers and pay \$250,000 for reimbursement of costs and credit education and enforcement purposes.
- Signed an Assurance of Discontinuance with a licensed lender that made payday loans and allowed consumers more than one renewal/refinance loan. Colorado law allows only one renewal of a payday loan and then the consumer must repay the loan. The lender refunded and credited over \$30,000 in excess loan finance charges to Colorado consumers.
- Signed an Assurance of Discontinuance with another licensed payday lender that made unlicensed loans from one of its branch locations for several months. The lender refunded and credited over \$13,500 in loan finance charges to Colorado consumers.
- Received over \$24,000 from the surety bond of a formerly-licensed payday lender that continued to make and collect loans after its licenses expired. Of that amount, \$9,000 was refunded to consumers, \$15,000 was paid as a penalty and for custodial funds for education and enforcement purposes, and the lender's licenses were revoked (a change from their status as expired).
- Investigating a group of payday lenders that may be affiliates to determine if separate corporate entities are being used to evade state limits on numbers of loans, loan amounts, and numbers of renewals/refinances.
- Investigating a credit seller and sales finance company to determine the extent of their relationship and whether the use of consumer leases was done to evade state limitations on consumer credit sales contracts.



## Mortgage Lending

- Investigating a company that made high-cost first mortgage refinance loans but may not have complied with the Colorado Consumer Equity Protection Act in either loan terms or disclosures.

- Continued a review of mortgage loan advertising for compliance with the UCCC and the federal Truth in Lending Act. Sixteen cease and desist advisory letters were issued to brokers and lenders with deficiencies in their advertising and their ads are being monitored. This project is ongoing and will continue in 2006.

## Collection Agencies

The Collection Agency Unit supervises and regulates those regularly engaged in the collection of third-party debts in Colorado. Debt collectors are required to be licensed and are subject to investigation.

Some highlights for this Unit in 2005 include:

- Oversaw the activities of 565 licensed collection agencies engaged in the collection of debts in Colorado, an increase from 2004 of 48 agencies, and issued 109 new collection agency licenses.
  - Resolved, investigated, filed, or defended 58 enforcement actions and investigations under the Colorado Fair Debt Collection Practices Act.
- Collected \$71,500 in fines, penalties, cost reimbursements, and credit education and enforcement funds in connection with these activities.
- Distributed over \$10,000 in consumer restitution for violations of the law.

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## Debt Buyers

The Consumer Protection Section executed numerous stipulations with companies that buy defaulted debt or uncollected judgments. A number of these companies were not licensed as collection agencies but were contacting consumers by mail and phone or filing lawsuits against them in Colorado courts. One such company paid \$20,000 to the State.

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## Other Violations

- Executed stipulations with a licensed collection agency over continued violations of the law involving failure to cease communication after receipt of written requests for no additional contact. The collection agency paid over \$10,000 in consumer restitution and \$8,000 to the state.
- Commenced a disciplinary action against a licensed collection agency for continued communication after the consumer requested no further contact, harassment, and false representations.



## Other Noteworthy Achievements

In addition to the specific cases and investigations noted above, the Unit is engaged in a large number of other consumer protection investigations, some or all of which may give rise to a settlement or, in a few cases, litigation. Some of these investigations include:

- Collected and released loan data, including payday lenders that loaned over \$367 million to Colorado consumers, small installment lenders that loaned over \$1.6 million to Colorado consumers, and supervised lenders (finance and mortgage companies) that loaned more than \$1.7 billion to Colorado consumers.
- Issued a press release on an Internet payday lender settlement and the procedure for distribution of the \$2.5 million in consumer refunds.
- Notified over 500 motor vehicle dealers of the requirement to comply with the UCCC and file annual consumer credit notification forms and fees. This resulted in approximately 275 additional auto dealers filing notice of intent to engage in consumer credit sales.
- Issued 58 cease and desist notices to unlicensed debt collectors to ensure compliance with Colorado law.
- Handled 759 written complaints against collection agencies and additional telephone complaints and inquiries.
- Summarily suspended the license of a collection agency that collected dishonored checks when it ceased business, had negative balances in its bank accounts, and closed its doors. Administrative license revocation proceedings have been commenced. Claims against the agency's surety bond are being received and a hearing on the bond claims will be held in 2006.



A nearly-full moon sets over a Colorado mountain range just west of the Continental divide near Dillon.

## OFFICE OF CONSUMER COUNSEL – ADVOCATING FOR FAIR RATES FOR RESIDENTIAL, SMALL BUSINESS AND AGRICULTURAL RATEPAYERS

The OCC Unit provides legal support and represents the Office of Consumer Counsel (“OCC”) within the Department of Regulatory Agencies. By statutory mandate, the OCC advocates on behalf of residential, small business, and agricultural interests before the Public Utilities Commission (“PUC”) and other forums concerning electricity, natural gas, and telephone issues.

*By statutory  
mandate, the  
OCC advocates on  
behalf of  
residential, small  
business, and  
agricultural  
interests.*

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### Significant Litigation handled by the OCC in 2005

- Public Service Company of Colorado (“Public Service”) filed an Application seeking, among other items, the waiver of the PUC’s least-cost planning rules in order to build an electric generating plant near Pueblo. The OCC actively participated in this docket by filing testimony, by participating in the hearing and by actively participating in settlement negotiations. A Settlement Agreement was approved by the PUC in March 2005. The Order granted PSCo a Certificate of Public Convenience and Necessity (“CPCN”) for the 750 mW electric generating plant.
- Participated in Public Service’s Application for a CPCN for authority to construct 345 kV transmission lines from its Comanche electric generating facility near Pueblo to Daniels Park near Castle Rock. This case was the first case to be decided by the PUC regarding noise levels from transmission lines since the adoption by the 2004 Colorado legislature of C.R.S. § 25-12-103, Maximum Permissible Noise Levels. A hearing was held before an Administrative Law Judge (“ALJ”) in June 2005. The ALJ’s Recommended Decision, which was issued in November 2005, has been appealed to the PUC. A final decision is pending.
- Filed testimony and participated in settlement negotiations in Public Service’s 2005 consolidated Phase I and Phase II gas rate case. The Phase I gas rate case



set the revenue requirement, while the Phase II gas rate case set the rates among the customer classes. A Settlement Agreement was filed with the PUC on December 20, 2005. A hearing before the PUC on the Settlement Agreement is scheduled for January 2006.

- Filed a Complaint against Western Wireless claiming that Western Wireless was not extending their Basic Universal Service offering to customers as required by a previous PUC Decision. The case went to hearing before an ALJ, who agreed with the OCC's claim in his Recommended Decision. The PUC upheld the ALJ's Decision in October 2005 and indicated it would certify the entire record to the Federal Communication Commission stating that Western Wireless should not be able to collect money under the Federal Universal Service Support during the November 2002 through March 2005 violation period. A final decision is pending because the PUC's decision has been appealed.
- Filed testimony and participated in settlement negotiations in Qwest's application to recover costs incurred for the relocation of facilities as a result of the T-Rex construction and the Convention Center construction. This application was filed based on legislation passed by the Colorado Legislature. A Settlement Agreement was filed with the PUC in November 2005. The PUC approved the Settlement Agreement in December 2005.
- Participated in a rulemaking docket to implement Amendment 37, Renewable Energy Standards, which was approved by the Colorado voters in November 2004. Amendment 37 requires that the rulemaking process must be completed by March 31, 2006. A decision setting forth the rules is pending.
- Participated in a docket regarding the reclassification and/or deregulation of specific telecommunication services for Qwest. The OCC actively participated in settlement negotiations, which resulted in a Settlement Agreement in April 2005 with Qwest, the OCC and PUC Staff. The Settlement Agreement was approved by the PUC in June 2005.



Colorado's State Tree, The Colorado Blue Spruce.

# NATURAL RESOURCES

## PROTECTING COLORADO'S ENVIRONMENT AND NATURAL RESOURCES

The Natural Resources and Environment Section, led by Deputy Attorney General Casey Shpall, works on behalf of Colorado, its citizens, client agencies and boards to protect and improve the quality of our natural environment, and to intelligently use and develop our natural resources.

The Section provides legal counsel and representation

on natural resource and environmental issues to the Colorado Department of Natural Resources ("DNR"), the Colorado Department of Public Health and Environment ("CDPHE"), and any other state agency or official with a natural resource or environmental concern. The Section also represents the Natural Resources Trustees' work to assess and restore natural resources damaged by pollution.

## INTERSTATE WATER

The Natural Resources and Environment section of the Attorney General's Office had a number of successes in 2005 including, protecting Colorado's interests on each of its interstate rivers, including continued participation in the twenty-one year-old lawsuit in the United States Supreme Court on the Arkansas River (*Kansas v. Colorado*); assisting in implementing the settlement on the Republican River (*Kansas v. Nebraska and Colorado*); participating in negotiations with Wyoming, Nebraska and the federal

government to resolve endangered species issues on the South Platte River; and advising state policymakers in discussions on interstate responses to drought on the Colorado River.

- **Arkansas River.** After trial in this matter concluded in January 2003, the Special Master issued his Fourth (and final) Report to the United States Supreme Court. In that report, the Special Master agreed with Colorado's calculation of \$29 million in damages owed to Kansas for depletions during

**Suthers: Three states can resolve concerns regarding water flow**

Agreement for decades-long dispute over Republican River

The Associated Press

DENVER – Attorney General John Suthers said an agreement on divvying up water from the Republican River includes dispute-resolution procedures he hopes can be used to ease concerns from former Nebraska Cornhuskers coach Tom Osborne.

Osborne, who is now a Republican U.S. Representative from Nebraska, wrote to Kansas and Colorado officials asking them to reconsider implementing terms of the agreement that ended a decades-long dispute over water allocation between the three states.

In his letter, Osborne said he made the request because of unforeseen circumstances, to which Suthers responded.

"The settlement terms... were negotiated by able representatives of all the states," Suthers wrote in a letter dated Friday and released Wednesday.

Osborne said the agreement didn't take into account the effect of a multiyear drought that has reduced the amount of water available in Kansas and Nebraska.

Nebraska may have to transfer 100,000 acre-feet of water into the river basin by 2007 or pay \$15 million in fees and damages in 2008 after drawing more water allowed by the agreement in 2003 and 2004. Compliance is measured over five-year periods.

A Kansas-Nebraska compact signed in 1943 allocated the annual water supply in the Republican River Basin, with Nebraska getting 49 percent, Kansas getting 40 percent and Colorado 11 percent. The river starts in eastern Colorado, flows into Kansas and up to Nebraska and returns to Kansas in Republic County.

In 1998, Kansas went to the U.S. Supreme Court, claiming Nebraska had violated the compact by allowing the unimpeded development of thousands of wells drawing from the river and its tributaries.

The court appointed a special master to oversee the case, and the settlement negotiated by the three states was finished in June 2003.

In his letter, Suthers pointed out the agreement was completed in 2002 at what he said was the end of a severe drought. He added that Colorado formed a special conservation



the years 1950-1994, and rejected Kansas' claim for a higher amount. (In the spring of 2005, Colorado paid Kansas this amount in full, including interest.). The Special Master furthermore rejected Kansas' request for the appointment of a "river master" to resolve any ongoing technical disputes and endorsed the State Engineer's Rules as appropriate to maintain Colorado's compliance with the compact. In December 2004, the Supreme Court upheld the Special Master's recommendations in full, setting the stage for the end of this twenty-year-old case. On remand, the Special Master set a tight schedule for resolution of remaining technical issues. A number of issues were resolved by agreement. The Special Master will then file a final decree for the Supreme Court's review.

- ***Republican River.*** In 2003, the United States Supreme Court approved a settlement of the compact lawsuit reached with Kansas and Nebraska. The settlement waives all claims by all three states, so Colorado owes no monetary damages. The three states cooperated in the development of a new groundwater model, and agreed on accounting procedures that decrease the likelihood of future disputes. In 2004, attorneys in the office worked with representatives of the State Engineer's Office, Colorado legislators, and local water users to create and advise the Republican River Water Conservation District, which is charged with developing procedures to allow continued water use in Colorado while meeting our obligations under the settlement. In 2005, attorneys continued to work with the District to ensure compact compliance. The Natural Resources Unit is currently coordinating to defend the State's current groundwater management rules against a challenge recently filed by Colorado surface water users.
- ***South Platte River.*** Continued working with other Colorado water users to negotiate a cooperative agreement with Nebraska, Wyoming, and the United States for an endangered species recovery plan (for whooping crane, pallid sturgeon, piping plover, and interior least tern), which will allow anticipated water development in the South Platte basin in Colorado to proceed without limitations based on the Endangered Species Act. The agreed-upon program is now being reviewed under National Environmental Policy Act and the Endangered Species Act. The schedule calls for completion of the Environmental Impact Statement and issuance of the Record of Decision approving the program in early 2006.
- ***Colorado River.*** Worked with Colorado representatives and water users to develop a coordinated Upper Colorado River Basin position in negotiations with Lower Colorado River Basin states on drought responses on the Colorado. Five years of severe drought have drawn down Lake Powell, which protects the Upper Basin from compact "calls" from the Lower Basin. Although the drought broke in 2005 and Lake Powell gained storage, the Secretary of the Interior has called on all seven Colorado River Basin states to develop a plan to deal with future shortages. The states are in the early stages of meeting and attempting to find agreement on this difficult issue. The Attorney General's Office is working to identify and prioritize legal issues and complete research needed to support our negotiations.

## FEDERAL RESERVED WATER RIGHTS

- Worked with the federal government to satisfy its water needs while protecting the vested rights of state water users in proceedings involving the Black Canyon of the Gunnison National Park and water rights for the Southern Ute and Ute Mountain Ute Indian Tribes. Intervened in federal district court action brought by groups challenging the federal government's actions in attempting to compromise and resolve its claims for Black Canyon. Continued to litigate the federal court action to attempt to allow the water court compromise to move forward.
- Cooperated with the United States, the Southern Ute Indian and Ute Mountain Ute Tribes, and the Southwestern Water Conservation District to file and litigate actions to conform the Tribes' water rights under a 1986 settlement to the smaller Animas-La Plata project approved by Congress in 2000.
- Negotiated with the federal government and other interested parties concerning the United States' application for water rights for the recently created Great Sand Dunes National Park.

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## WATER RIGHTS

- Reached resolution in the Aurora/Rocky Ford exchange case with representatives from the City of Aurora and City of La Junta to mitigate water quality impacts.
- Drafted rules for the Colorado Water Conservation Board to amend existing Instream Flow Appropriation Rules and Recreational In-Channel Diversion Rules to implement new law.
- Took legal action to protect the state water rights system and decreed water rights from inconsistent Forest Service demands for "bypass flows." In April 2004, the federal district court in *Trout Unlimited v. USDA* ruled that the Forest Service had statutory authority to demand bypass flows from long-established water storage and diversion structures as a condition of renewal of land-use permits. In cooperation with the affected water users, filed an appeal with the Tenth Circuit Court of Appeals based on Congress' express direction to the Forest Service that its permitting actions should not affect vested water rights or state water allocation systems. The matter was fully briefed in 2004 and 2005 and is awaiting possible oral argument and decision.
- Advised and represented the State Engineer in litigation and negotiations concerning proper operation of Green Mountain Reservoir, a major federal facility key to water supplies for both Front Range and Western Slope water users.
- Resolved protest litigation of the decennial water rights abandonment list.
- Assisted the State Engineer in drafting and



promulgating the rules governing well uses in the San Luis Valley. Represented the State Engineer in defending against challenges to those rules. A number of challenges were filed, and a 6 week trial began in January 2006.

- Pursued enforcement actions for violations of ground water rules in the South Platte River basin, Division 1, and the Arkansas River basin, Division 2.
- Filed, along with other states, an amici curiae brief in the Second Circuit Court of Appeals urging that court to rule that interbasin transfers of water

do not require discharge permits under the Clean Water Act.

- Pursued numerous enforcement actions against well drillers who failed to comply with state standards
- Successfully defended the State and Division Engineer's positions regarding enforcement authority in Water Divisions 1 and 5.
- Obtained favorable decrees in a dozen Instream Flow applications for the Colorado Water Conservation Board.

## Supreme Court Litigation for Water Rights included:

- Participated in almost 1,000 water rights proceedings in Colorado's water courts, including several appeals in the Colorado Supreme Court, several extended trials, and numerous court proceedings to enforce orders of the State Engineer.
- Successfully argued before the Colorado Supreme Court on behalf of the State and Division Engineers and the Colorado Water Conservation Board in the High Plain's case that the anti-speculation doctrine applies to a change of water rights case as well as new appropriations. The High Plains Case involved the proposed change of 29,000 shares (1/3) of the Fort Lyon Canal Company to any of over 50 different uses in any of 28 counties. The Supreme Court affirmed the Water Court's dismissal on the basis that the application violated the anti-speculation doctrine.
- Prevailed before the Colorado Supreme Court on behalf of the State, the Division Engineers and the Colorado Water Conservation Board in the appeal of Central City's application regarding the integration of augmentation plans in priority administration. The case has been fully briefed and argued and a decision is pending.
- Defended the Colorado Water Conservation Board's position regarding Recreational In-Channel Diversions in several trials and an appeal to the Colorado Supreme Court.
- Protected numerous water rights for the Division of Wildlife and the Department of Parks.
- Filed numerous enforcement actions in Water Divisions 1, 2 and 7 against well owners who violated the Division Engineer's Cease and Desist Orders by pumping groundwater illegally. The State prevailed on the one action that went to trial. This case was appealed to the Colorado Supreme Court and a decision is pending.

## OIL, GAS, MINERALS, AND STATE LANDS

- Won two favorable rulings for the State Board of Land Commissioners concerning water development on the Lowry Range.
- Protected the State's interests in mined land reclamation by representing the Division of Minerals and Geology in bankruptcy proceedings involving mining companies including ASARCO, LLC.
- Protected the authority of the Mined Land Reclamation Board and the Division of Minerals and Geology regarding the regulation of mining operations by filing an amicus curiae brief in a pending litigation and by negotiating with counties regarding proposed local regulations.
- Assisted the State Board of Land Commissioners in protecting its possessory interests and water rights in trust land it manages for the benefit of public schools.

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## NATURAL RESOURCE DAMAGES RESTORATION

- Continued to pursue resolution of the state's claim for natural resource damages at the Rocky Mountain Arsenal. In conjunction with this effort, continued to lead the Northeast Greenway Corridor Project, a coalition of jurisdictions in the northeast Denver metropolitan area. The Project's goal is to establish the Northeast Greenway Corridor, a network of projects designed to preserve critical wildlife habitat, open space, farmlands, park buffer zones, riparian corridors, and recreational trails. The Northeast Greenway Corridor will surround the recently dedicated Rocky Mountain Arsenal National Wildlife Refuge and extend from Denver to Brighton and Commerce City to Aurora.
- Worked with Senators Allard and Salazar to draft proposed legislation resolving natural resource damage claims at Rocky Flats.
- Continued working to resolve the state's natural resource damage claim at the California Gulch Superfund site.
- Represented CDPHE and the state Natural Resource Trustees in successfully negotiating a consent decree with Summit County, Breckenridge, the EPA and affected landowners that will result in cleanup of mining wastes, significant reductions in heavy metals contamination of French Gulch and the Blue River, and preservation of nearly 1,800 acres of land adjacent to Breckenridge as open space.
- Solicited and evaluated proposals to spend \$2 million in natural resource damage funds at the Uravan superfund site, and in cooperation with local representatives arrived at a recommendation to the State Natural Resource Trustees on how to spend the funds.
- Negotiated decontamination of historic buildings and appropriate environmental covenants at the Uravan superfund site, which enabled de-listing of the buildings from the



- National Priorities List and transfer of ownership of the buildings to Montrose County for use by the local historical society.
- Assisted in development of the Alamosa River Watershed Restoration Master Plan, including coordinating and attending meetings with the Trustees' Council, the Alamosa Foundation and other local representatives.
- In cooperation with local officials, solicited and evaluated proposals to spend \$1.2 million in natural resource damage funds at the Cotter Corporation's Cañon City Superfund site, and then recommended and received approval by the State Natural Resource Trustees on how to spend the funds.



Colorado State Flower,  
White and Lavender Columbine

## CLEAN AIR, LAND AND WATER

### Air Quality

- Assisted the Air Pollution Control Division with the development and adoption of the Ozone Early Action Plan. The plan cuts ozone-forming emissions from oil and gas operations in half. The plan protects public health by reducing ozone levels in the Denver area, but does so without imposing the regulatory burdens that accompany a non-attainment designation.
- Worked with the Air Pollution Control Division through a stakeholder process and rulemaking to completely revise and reorganize the principal regulation of the Air Quality Control Commission regarding permitting of stationary sources.
- Negotiated full payment of delinquent licensing fees for all air quality permits as administrative expenses from bankruptcy estate of Agile Stone Systems, Inc., a Colorado aggregate producer.
- Represented the Colorado Department of Public Health and Environment in pending litigation challenging CDPHE's issuance of a construction permit for Xcel Energy's Comanche 3 unit in Pueblo.
- Resolved numerous and ongoing air quality related violations at Rocky Mountain Steel Mills' Pueblo facility. Settlements included significant penalties and Supplemental Environmental Projects. An administrative compliance order on consent included \$119,000 in penalties and not less than \$524,000 in SEPs, and a court stipulation included \$81,000 penalties and \$324,000 in SEPs.

*A Trinidad septage hauler was ordered to develop and implement a remediation plan and pay \$45,000 as a civil penalty and \$80,000 to fund supplemental environmental projects.*

## Land Cleanup

- Continued to represent CDPHE in ensuring the continued protectiveness of the cleanup of Rocky Flats, a former nuclear weapons manufacturing plant northwest of Denver. Physical cleanup work was completed in October 2005, and we are working with DOE and EPA to verify that all regulatory and cleanup requirements were actually met, and to determine appropriate long-term stewardship requirements for the site.
- Following a favorable ruling from the Tenth Circuit Court of Appeals, pursued recovery of cleanup costs from three entities related to the Summitville Mine pollution disaster. Payment has been secured from one defendant, and we are pursuing another through the bankruptcy process.
- Advised the Hazardous Materials and Waste Management Division, and drafted and negotiated necessary documents to expedite the remaining cleanup of the former Lowry Air Force Base by having private parties perform the cleanup in lieu of the Air Force.
- Represented the Hazardous Materials and Waste Management Division in the ASARCO bankruptcy case. Negotiated order to preserve State's rights to enforce performance of ASARCO's environmental obligations at the California Gulch Site and Black Cloud Mine.
- Pursuant to a prior settlement agreement obtained by this office, a Denver electroplating facility paid the second \$400,000 installment of a \$1.2 million dollar penalty.
- Represented CDPHE in on-going negotiations with EPA to ensure the development of part of a former Superfund mining site will be conducted safely.
- Obtained a stipulated injunction preventing a Trinidad septage hauler from illegally disposing septic tank and portable toilet waste adjacent to the Purgatoire River. Defendant was ordered to develop and implement a remediation plan and pay \$45,000 as a civil penalty and \$80,000 to fund supplemental environmental projects.
- Represented CDPHE on a successful cleanup of a Boulder County industrial facility that will now allow residential development at the property. The facility



removed over 30,000 cubic yards of contaminated soils.

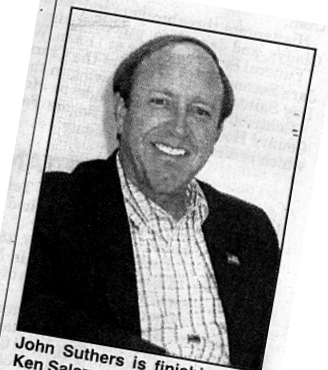
- Advised the Hazardous Materials and Waste Management Division on the cleanup of several sites in the Denver area where asbestos was found in soils during redevelopment.
- Worked with concerned citizens, the Hazardous Materials and Waste Management Division, Pueblo County and the United States to successfully issue several phases of a State hazardous waste treatment permit for the Army's planned destruction of chemical weapons stored at the Pueblo Chemical Depot. Coordinated efforts to secure funding for the waste treatment plant and prepared to litigate the State's enforcement of weapons destruction deadline set by U.S. ratified treaty.
- Coordinated with the Hazardous Materials and Waste Management Division, Mesa County and the City of Fruita on redevelopment of the abandoned Fruita oil refinery through compliance assistance and administrative enforcement mechanisms.
- Successfully litigated an injunction and civil penalty action against an oil and gas brine waste disposal facility that forged laboratory results and submitted them to a Hazardous Materials and Waste Management Division inspector.
- Assisted in negotiations on nationwide settlement of claims under a federal consent decree between plaintiffs United States and the States of Colorado, Louisiana, New Jersey, Oklahoma and Texas, and defendants Valero Refining Co. and Tesoro Refining and Marketing Corp. This settlement involved several refineries nationwide. For violations at Denver's Colorado Refining Company, helped negotiate a \$500,000 Supplemental Environmental Project involving the assessment and implementation of energy efficiency measures and renewable energy technology for schools in Commerce City and/or the Northeast Denver Metro Area. Also helped negotiate a \$200,000 SEP for the reduction of emissions for in-service fleet vehicles.
- Continued to represent CDPHE concerning the application of Cotter Corporation in Cañon City to receive shipments for disposal of radioactive waste soils from the Maywood, N.J. Superfund Site. Received a favorable ruling on Cotter Corporation's challenge to the CDPHE's denial of authorization to receive and dispose of Maywood wastes.
- Issued a renewal of Cotter's uranium mill license, and then defended it in a 6-day adjudicatory hearing.

## WATER QUALITY

- Forced defendant to comply with District Court mandatory injunction for a public water system serving residents of Moraine Park Subdivision in Granby resulting from repeated contamination problems. Required retention of certified operator in responsible charge, upgrades to system and continuous compliance monitoring.
- Negotiated settlements of enforcement actions against Colorado Springs Utilities, regarding unpermitted wastewater sludge as well as sanitary sewer discharge violations and permit violations. Obtained a \$20,000 supplemental environmental project, a \$110,470 penalty, and detailed corrective action measures requiring timely system repair, maintenance and upgrades. Also initiated enforcement actions in late 2005 regarding additional sewer discharge and reclaimed wastewater violations.
- Initiated a lawsuit and obtained a preliminary injunction against Tom Rivera of Rivera's Vacuum & Supply in Trinidad, for dumping untreated sewage in and near the Purgatorie River.
- Filed suit against National Hog Farms for violations of previous consent orders with CDPHE, including failure to maintain adequate financial assurance.
- Partnered with EPA and the Department of Justice on six nation-wide enforcement actions against nationally known home builders and "big box" stores for widespread, systematic storm water permit violations at large construction sites in Colorado.
- Assisted the Water Quality Control Division on its proposal for extensive revisions to the Basic Standards and Methodologies for Surface Water, Regulation 31, which contains the state-wide guidelines for Colorado's water quality program, and will continue to assist with ongoing issues with respect to temperature standards.
- Advised the Water Quality Control Division on its

statutory authority to promulgate additional regulations addressing intentional indirect potable water reuse of water by wastewater treatment dischargers and drinking water suppliers.

- Finalized comprehensive settlement in federal district court resolving water quality permit violations for mine drainage discharges to the Dolores River near the Town of Rico and obtaining \$290,000 in civil penalties from defendants.



John Suthers is finishing out Ken Salazar's term as Attorney General for Colorado.

### State AG sees water as priority

Suthers: Colorado needs to protect 'every possible drop of water'

By RUTH HEIDE  
ALAMOSA — Protecting Colorado's water is one of the top priorities of Attorney General John Suthers who followed Ken Salazar as the 37th Attorney General for the state. Suthers said one of the top priorities for the Colorado's Attorney General (AG) has to be "trying to protect every drop of



# CIVIL LITIGATION AND EMPLOYMENT

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## Protecting the State Against Civil Lawsuits and Helping State Government Effectively Manage its Workforce

Under the leadership of Beth McCann, the Colorado Attorney General's Office, through the Civil Litigation and Employment Law Section, defends State employees and State agencies sued in state and federal courts by people claiming personal injuries, property damage, and employment discrimination as well as those claiming that their constitutional rights have been violated by state action. This section also represents state agencies in personnel matters in front of the State Personnel Board. Moreover, the Civil Litigation and Employment Law attorneys also provide legal advice and representation to the Colorado Department of Transportation ("CDOT"), the Colorado Transportation Commission, the Department of Corrections ("DOC"), the Colorado State Board of Parole, the Division of Risk Management and all employees of those agencies. To help educate state employees and prevent future claims against the State, the attorneys in this unit provide advice and training in personnel administration and employment issues.

Last year, the Civil Litigation and Employment Section handled **734** new court cases and **319** new personnel cases.

*In 2005, the Civil Litigation and Employment Section handled 734 new court cases and 319 new personnel cases.*

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## TORT LITIGATION

The Tort Litigation Unit of the Litigation Section defended the State in **111** new lawsuits alleging personal and property damage as well as federal civil rights claims. **Seven** new cases were opened to monitor requests for attorneys' fees and costs. The attorneys also continued to handle many cases that were opened in previous years.\* Both units handle Department of Corrections (DOC) tort and civil rights cases. The lawyers also advise the Division of Risk Management regarding myriad issues.

\*Figures do not include all tort cases brought against DOC, some of which are included in a separate section for the Corrections Unit.

## The Tort Litigation Section accomplished the following during the past year:

- Won **32 motions** to dismiss tort cases, a **success rate of 97 percent**.
- Won **11 cases** filed on appeal; these decisions generally upheld lower court rulings in favor of the state defendants, a **success rate of 85 percent**.
- Settled **25 tort cases** favorably for the State.
- Convinced plaintiff's attorneys in **15 cases** to dismiss cases voluntarily because the cases could not be brought based on the Colorado Governmental Immunity Act or the Court dismissed for failure to comply with procedures.
- Successfully opposed **two** Petitions for Certiorari filed in the United States Supreme Court.
- **Five** cases that were being monitored by the Tort Litigation Unit were resolved without the necessity of any attorneys' fees or costs being paid.
- Defended claims cumulatively seeking **\$15,074,469** in damages, resulting in payments of only **\$2,586,781** saving the State approximately **\$12,587,000**.
- Presented to several state agencies regarding the lawsuit process, governmental immunity, and what actions to take if sued.

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## Employment Tort Litigation

The Employment Tort Unit defends lawsuits brought by state employees and would-be state employees against their supervisors and employers. These employment cases are filed in state and federal district court and involve claims arising out of federal civil rights and employment law and state civil rights, tort, whistleblower and contract law. The lawyers and staff also provide advice and training to various state agencies regarding employment issues.



The Employment Tort unit accomplished the following in 2005:

- Defended 60 employment cases filed in state and federal district courts including 21 new cases. These cases involved over 450 separate claims for relief, including approximately 250 claims for relief against state supervisors and managers sued personally.
- Aggressively sought and obtained dismissal and summary judgment, saving the State over \$5 million in damages, including:
  - Obtained early dismissals of all claims in two significant civil rights actions brought by terminated employees, resulting in significant cost savings for the State.
  - Obtaining summary judgment in two lawsuits resulting in the dismissal of 33 claims for relief:
    - ◆Summary judgment in favor of Platte Valley Youth Services Center and their director in a federal lawsuit. Plaintiff sought over \$150,000 in damages.
    - ◆Summary judgment in favor of the Colorado Department of Human Services in a retaliation claim brought by a former employee seeking over \$250,000 in damages.
- Won every issue litigated in the four appellate cases decided during the year 2004, including:
  - U. S. Tenth Circuit decision upholding summary judgment in favor of five officials at the Colorado Bureau of Investigation in a federal lawsuit filed by a former investigator alleging violation of his civil rights. Plaintiff claimed that the officials fabricated evidence and testified falsely in order to cause his termination and subject him to a trial on criminal charges. Plaintiff sought over \$2.5 million in damages.
  - U.S. Tenth Circuit decision upholding summary judgment in favor of the Colorado Judicial Department in a case brought by a current employee who claimed that she was not promoted as a result of gender discrimination. The appellate decision contains favorable language on pretext that will assist the State, as well as other employers, in the defense of discrimination claims.
- Aggressively sought attorneys' fees for defense of frivolous motions and for plaintiffs' failures to provide discovery, resulting in fees awards of over \$20,000.
- Aggressively defended state whistleblower action convincing court to conduct evidentiary hearing on preliminary issue of subject matter jurisdiction. After seven days of hearing, court ruled in the State's favor, making favorable legal findings that will assist in the defense of future whistleblower claims. The court also awarded attorney's fees and costs to the State. The fees and costs incurred were over \$100,000.
- Created and presented training to numerous state agencies and Colorado State Patrol this year, including sessions concerning general liability and employment issues.

## Employment Personnel Unit

The Personnel and Employment Law Section of the Colorado Attorney General's Office helps state government manage its workforce and defends the State and its employees in employment and personnel disputes. The attorneys and staff represent all agencies in personnel hearings and matters before the State Personnel Board. They also handle cases that are appealed to the Colorado Court of Appeals and provide advice and training to state agencies and employees regarding personnel matters.

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### Employment Personnel Unit's Accomplishments in 2005:

- Provided “front-end” employment advice and consultation concerning hiring, discharging, and disciplining employees and addressing issues involving workplace violence, Title VII, Americans with Disabilities Act, Age Discrimination in Employment Act, Fair Labor Standards Act, Family Medical Leave Act, Title VII, alcohol and drug testing, retaliation, whistle-blowing, and breach of contract.
- Coordinated and presented statewide and agency-specific training seminars directed to State officials and managers to effectively educate, train and manage the workforce; to prevent employment grievances and claims; and to educate and train managers and supervisors on indemnification and defense issues arising after litigation commences.
- Defended 319 cases before the State Personnel Board and the Colorado Court of Appeals, including:
  - Winning 1 out of 2 Court of Appeals decisions involving appeals by current and former state employees against their employing agencies.
  - Representing State agencies in 33 hearings before the State Personnel Board, which involved issues ranging from disciplinary terminations, layoffs, and lesser disciplinary actions to grievance decisions. The Board's Administrative Law Judge upheld the State's action without modification in 22 of those cases, and allowed the State to take a modified action in 4 other cases.
  - Successfully argued that a hearing should be denied in 24 out of 30 petitions filed with the State Personnel Board by state employees seeking a discretionary hearing.
  - Represented state agencies in 13 appeals from ALJ decisions to the State Personnel Board.
  - Of the remaining cases, 109 cases were settled, and 74 cases were resolved in the State's favor.



## TRANSPORTATION UNIT

The attorneys in the Transportation Unit provide general legal advice to the Colorado Department of Transportation (CDOT) and represent CDOT in eminent domain cases as well as other types of land use cases. One of the attorneys reviews all CDOT contracts and revises them as needed. The attorneys also advise the Transportation Commission and the Colorado Tolling Enterprise Board.

Last year, the attorneys in the Transportation Unit had many successes:

- Represented CDOT in 52 new cases involving condemnation, access, relocation, billboard, inverse condemnation, eviction and other cases. In FY 2004-05, the unit attorneys settled or resolved by trial 21 condemnation cases saving the state in excess of \$500,000.
- Reviewed 457 contracts for CDOT and exceeded turnaround time for review of approximately 1.8 days, much shorter than the general turnaround time for attorney review of state contracts.
- Continued to obtain overall favorable rulings in several trials concerning land and billboard valuations.
- For Fiscal Year 04-05, assisted CDOT in settling 20 construction contract claims, saving the state more than \$1.8 million.
- Continued to provide legal advice and oversight to CDOT regarding the issuance of bonds during the last four years. In conjunction with CDOT, assembled a team of lawyers and investment bankers to accomplish this in an expeditious and thorough manner.
- Won a motion for preliminary injunction against a contractor who was seeking to prevent CDOT's assessment of liquidated damages relating to a tunnel project on Highway 160 near Wolf Creek Pass. CDOT currently is defending claims totaling over \$6,000,000 in additional compensation relating to this project.
- Represented CDOT in non-binding arbitration and mediation hearings to resolve claims for additional compensation made by contractors on highway projects on SH 115 and US 40.
- Represented CDOT in several state district court actions involving subcontractor disputes with prime contractors on CDOT projects, resolving actions without additional cost to the agency.
- Advised CDOT regarding conducting an Environmental Impact Statement for the Northwest Corridor that is generating controversy among local governments and citizens. The City of Golden has passed an ordinance that purports to require CDOT to obtain a license or permit to design and build a state highway.
- Advised CDOT regarding similar environmental studies regarding the I-70 mountain corridor, the C-470 corridor, and I-70 to DIA.
- Provided counsel regarding the negotiation and completion of the contracts necessary to complete the T-Rex project.
- Worked with CDOT regarding a contract for expansion of I-25 through Colorado Springs.

## CORRECTIONS UNIT

The lawyers and staff of the Corrections Unit defended the State of Colorado in 555 new inmate lawsuits involving myriad issues, including prisoner constitutional rights, time computation, prison discipline proceedings, habeas corpus petitions, religious issues, parole issues, constitutional, and contract issues. In addition, the lawyers handle approximately 1,300 claims filed by possible plaintiffs in the class action ADA lawsuit that was settled, *Montez v. Owens, et. al.* The lawyers also provide general legal advice to DOC and the Parole Board on a daily basis on matters such as open records requests, environmental issues, sentencing issues, internal discipline and procedural matters, and administrative regulations.

*The lawyers and staff of the Corrections Unit defended the State of Colorado in 555 new inmate lawsuits and also handled approximately 1,300 claims filed by possible plaintiffs in the class action ADA lawsuit.*

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### The Corrections Unit Accomplishments in 2005:

- In a major victory for the State, the Supreme Court upheld a Court of Appeals decision in *Colorado Criminal Justice Coalition v. Ortiz, et. al*, which will enable the Department of Corrections and the University of Colorado Health Sciences Center to proceed with the construction of severely needed projects. The decision also helps clarify the authority of the state to use lease purchase financing for future projects.
- Settled the New Times case favorably for the state and won the attorneys' fees and costs. The case, which was brought by the ACLU, contested DOC's censorship of magazines received by inmates. DOC issued a new regulation that was acceptable to the plaintiffs. The Court awarded \$235,000 in attorneys' fees and costs despite the plaintiffs' lawyers request for over \$700,000.
- Won a motion to dismiss a case brought by the family of a prison guard, Eric Autobee, who was murdered in the Limon Correctional Facility. Attorneys' fees were awarded against the plaintiffs in favor of DOC.



- Won a Tenth Circuit victory in a case brought by a Jewish inmate alleging a violation of constitutional rights by DOC for failure to provide kosher food (which is now provided). The Court affirmed the lower court's holding that the right to kosher food was not clearly established at the time the inmate requested it.
- Continued representation of DOC in the Montez class action ADA case which was settled last year. The inmates are pursuing individual claims of discrimination by filing claims with the Special Masters. The determination of these cases will occur over the next year. Approximately 1,300 potential claims have been filed. Approximately 60 hearings have been held and many briefs written in these claims.
- Obtained favorable rulings in ninety-three percent of matters brought by inmates
- Provided training and presentations to national conferences such as the National Institute of Corrections as well as local groups including Colorado district attorney offices and parole officers.

The Corrections Unit Obtained favorable rulings in ninety-three percent of matters brought by inmates.

These rulings include the following:

- Won 16 Motions for Summary Judgment
- Won 71 Motions to Dismiss
- Won 41 Habeas Corpus Petitions
- Won 46 matters on appeal
- Won 53 cases involving prisoner discipline issues
- Won 9 cases involving parole issues
- Settled 6 cases favorably for the state — Total payment was \$271,500 from value of \$522,500 resulting in a savings to the state of \$251,000
- Obtained an order for cost of care against an inmate for \$60,547

## Subsequent Injury Fund (SIF) and Civil Rights Unit

The attorneys in this unit provide legal advice to the Colorado Civil Rights Division (CCRD) within the Department of Regulatory Agencies in relation to charges of employment, housing and public accommodations discrimination and prosecute those cases that have been noticed for hearing by the CCRD. The attorneys and staff also defend the SIF and the Major Medical Insurance Fund (MMIF), which are part of the Special Funds Unit of the Division of Workers' Compensation within the Department of Labor and Employment, against claims by employees injured in the course and scope of employment.

The unit handled the following matters in the last year:

- Seventeen new SIF and MMIF cases; handled a total of 70 open cases;
- Twenty-four new Civil Rights cases; handled a total of 83 open cases;
- Settled 8 civil rights cases favorably for the state.

# STATE SERVICES

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## PROVIDING QUALITY, COST-EFFECTIVE LEGAL SERVICES TO STATE GOVERNMENT

Deputy Attorney General Renny Fagan and the staff of the State Services Section of the Colorado Attorney General's Office represent the Governor, other elected state officials, the administrative parts of the judicial branch, the State Board of Education, over 20 Colorado-supported universities, colleges and community colleges, and the Departments of Human Services, Health Care Policy & Financing ("HCPF"), Education, Higher Education, Labor & Employment, and Personnel & Administration.

Significant work by the Attorney General and Section attorneys in 2005 includes the following activity.

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## CONSTITUTIONAL CASES

- Defended the Governor in the Colorado Supreme Court in a case brought by the General Assembly challenging the Governor's veto authority over budget headnotes in the annual appropriations bill.
- Successfully defended the Governor in a lawsuit challenging the constitutionality of the General Assembly's transfer of funds from certain cash funds to the general fund for fiscal years 2002 through 2004 in order to prevent severe budget cuts in those years.
- Defended the Secretary of State in a lawsuit challenging campaign finance reform adopted by the voters in 2002 (Amendment 27) and will appeal to the United States Court of Appeals for the 10<sup>th</sup> Circuit.
- Defended the State in *Boulder Valley School District v. State Board of Education*, a case challenging the constitutionality of the Charter School Institute.
- Defended the State in *Colorado Christian University v. Weaver*, a case challenging the prohibition of state-funded financial aid to pervasively sectarian universities.
- Defended the State in *Lobato v. State Board*, a constitutional challenge to the current system of financing K-12 education.



## CHILD PROTECTION, HUMAN SERVICES AND HEALTH CARE

- On behalf of the Department of Human Services (DHS), the State Services Section initiated actions **against more than 67 child entities** seeking fines for violations of violations of licensing statutes and regulations, **collecting over \$17, 450.**
- Represented DHS in an additional 58 cases, including **20 summary suspensions against child-care providers** who failed to comply with regulations or who operated without a license.
- **Represented DHS in approximately 745 child protection cases**, resolving most through mediation.
- **Handled 22 cases for the Division of Youth Corrections** regarding appropriate level of detention or the release of juveniles.
- **Recovered \$1,957,308 in Medicaid payments** from personal injury settlements and from other liable third parties.
- Successfully defended the DHS and Health Care Policy & Financing (“HCPF”) in a federal lawsuit concerning Medicaid payment of residential services to adult persons with developmental disabilities, now on appeal in the 10<sup>th</sup> Circuit.
- Conserved state tax dollars spent on health care by defending nursing facility rate reimbursement appeals, seeking the recovery of Medicaid overpayments to nursing facilities and defending timely filing appeals.
- Defended DHS and HCPF in a lawsuit over the operation of the departments’ new computer system that determines eligibility for public assistance benefits.

*For 2005, the  
Medicaid Unit  
recovered  
\$1,957,308 in  
Medicaid  
payments from  
personal injury  
settlements and  
from other liable  
third parties.*

*Opened 76 cases to force employer compliance with mandatory workers compensation insurance statutes. One case resulted in the collection of over \$54,000 in fines and penalties.*



*On behalf of the State Board of Education, successfully prosecuted disciplinary actions against more than 35 educator/teacher license holders and applicants, including 15 sex offenders.*

## THE BUSINESS OF STATE GOVERNMENT

- Assisted the Department of Personnel and Administration in negotiating a new contract for state employee health benefits with Great West Healthcare and successfully defended DPA against a procurement protest by the prior health carrier.
- Represented the state in purchasing and procurement matters, including review for legal sufficiency of 584 contracts (not including CDOT or contract waiver requests).
- Negotiated contracts and amended plan documents to implement the new state Defined Contribution Retirement Plan to be offered to new employees January 1, 2006
- Represented the State in the issuance of four certificate of purchase transactions: two for state motor vehicles, one for the new facility at 14th and Lincoln and one for the new University of Colorado Health Sciences Center at Fitzsimmons.

## EDUCATION

- Worked with the newly created Charter School Institute to enact rules and conduct hearings on the first round of Institute Charter School applications. Trained the new board in Open Meetings Act and Open Records Act issues.
- Represented the Board of Trustees of Adams State College in the termination of the college's president for failing to follow appropriate budgeting procedures.
- On behalf of the State Board of Education, successfully prosecuted disciplinary actions against more than 35 educator/teacher license holders and applicants, including 15 sex offenders.
- On behalf of Metropolitan State College of Denver, successfully defended the College's Board of Trustees against a lawsuit by a group of faculty members challenging the Board's constitutional and statutory authority to revise the College's faculty personnel policies.



## WORKERS COMPENSATION

- Petitioned the Colorado Supreme Court to review three cases involving whether a claimant is required to purchase continuing health insurance coverage in order to have the cost of such coverage included in calculating his or her average weekly wage for purposes of compensation.
- Opened 76 cases to force employer compliance with mandatory workers compensation insurance statutes. One case resulted in the collection of over \$54,000 in fines and penalties. Closed 83 cases either by the employer obtaining insurance or no longer being in business. Obtained 18 district court judgments for fines ordered in the administrative process. Sent 19 judgments to Central Collection Services. Obtained 2 district court injunctions: one to shut down business, the other to order business to post bond with court in amount of one year's insurance premium.

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## OTHER LEGAL SERVICES

- On behalf of the Judicial Department, obtained a ruling that juvenile delinquency restitution orders are not dischargeable in Chapter 13 bankruptcy actions in Colorado, protecting victims of crimes by requiring juveniles to be held financially accountable in the same manner as adult criminals.
- Advised the Limited Gaming Control Commission concerning constitutional, statutory and regulatory interpretation of a gaming district and calculating floor space for determining number of gaming devices allowed in a casino.
- On behalf of the Board of Assessment Appeals (BAA) (property tax), successfully defended tax exemption for non-profit foundation providing homes for families in crisis.
- Successfully defended the BAA's decision on burden of proof for taxpayer in Supreme Court.
- Provided legal guidance to the Public Utilities Commission on gas, electric, telephone and transportation matters, including major rate cases.
- Continued to provide legal assistance to the Governor's Expert Emergency Epidemic Response Committee ("GEEERC"), the Governor, and CDPHE regarding the use of emergency public health powers in the event of a bio-terrorist attack or pandemic. Gave presentations on public health law at regional trainings in Grand Junction, Pueblo, Lamar and Gunnison for law enforcement and public health employees.
- Contributed to the issuance of several formal Attorney General Opinions involving legal issues regarding whether unspent stored value cards including gift cards are unclaimed property; whether the College Opportunity Fund affects the calculation of federal financial aid; the application of term limits to special district candidates who are declared elected after the election is cancelled; and clarifying the distribution of mineral leasing funds.

# BUSINESS AND LICENSING

Led by Deputy Attorney General Diana Black, the Business and Licensing Section protects Colorado citizens by providing litigation and legal counsel to state professional licensing and occupational regulatory boards. The Business and Licensing Section further represents and advises the Department of Regulatory Agencies and its Real

Estate Commission, Divisions of Insurance, Banking and Financial Services, the Securities Commission, the Department of Agriculture, the State Fair, the Department of Revenue, the Civil Rights Commission, the State Personnel Board, and the staff of the Public Utilities Commission.

## Regulation of Licensed Professions

Medical and Professional Boards			Podiatrists
Accountants	Chiropractors	Nursing Home Administrators	Professional Counselors
Acupuncturists	Dentists and Dental Hygienists	Optometrists	Psychiatric Technicians
Alcohol/Drug Abuse Counselors	Electricians	Outfitters	Psychologists
Appraisers	Engineers and Land Surveyors	Passenger Tramways	Real Estate
Architects	Marriage/Family Therapists	Pharmacists	Respiratory Therapists
Audiologists and Hearing Aid Providers	Midwives	Physical Therapists	Social Workers
Barbers and Cosmetologists	Nurses	Physicians and Physician Assistants	Unlicensed Psychotherapists
Boxing	Nurse Aides	Plumbers	Veterinarians



## Medical and Professional Boards

The Medical Unit of the Business and Licensing Section represents Boards that regulate physicians, physician assistants, nurses, nursing home administrators, certified nurse aides, psychiatric technicians, and podiatrists, and that determine the permissible scope of practice for emergency medical technicians. These Boards' mission is to protect the public through licensure, disciplinary actions, initiation of injunctive actions, rulemaking, and policy development.

Cases were referred to the Office of the Attorney General for disciplinary action, including the imposition of probation, suspension or revocation against licensees, for injunctions against unlicensed individuals, and for actions to sustain Board decisions to deny applications for licensure.

Examples of cases handled in 2005 on behalf of the Board of Medical Examiners include the following:

- The Board's attorneys handled a case involving a neurosurgeon alleged to have engaged in substandard practice in the treatment of seventeen patients, including a wrong-site brain surgery, a wrong-site spinal surgery, a case where the neurosurgeon instructed her physician assistant to begin a spinal operation while she went to another hospital to attend to an emergency, and a case where the physician failed to review a radiology report regarding a CT scan before releasing a patient with a brain hemorrhage. The neurosurgeon admitted substandard practice in four cases and placed her license on inactive status.
- The Board's attorneys handled appeals to Colorado's appellate courts. Two continuing appellate actions resulted in decisions this year affirming the Board's revocation of physicians' licenses based upon repeated substandard medical practice. One decision is still pending and will address the Board's ability to enter into and subsequently enforce settlement agreements, an issue of statewide importance.
- The Board learned that a psychiatrist whose license had been significantly restricted was prescribing medication in violation of his Board stipulation. Notably, the prior restrictions imposed after hearing and appeal related to his sexual relationship with a psychiatric patient several years ago. This year, the physician illegally authorized at least 2,000 prescriptions via the internet. On August 11th, 2005 the Board summarily suspended the physician and the next day, he agreed to surrender his Colorado medical license permanently.
- The Board's attorneys reached a interim cessation of practice agreement following the presuspension hearing of a trauma surgeon who is alleged to have written prescriptions to non-patients in exchange for sexual relations.
- The Board disciplined a general surgeon with a severe addiction who spent over \$10,000 in three months buying Oxycontin "off the streets."
- The Board's attorneys defended the decision to deny a psychiatrist's application for medical licensure due to her own psychiatric illness involving major depression, delusions and paranoia. Following a 3-day hearing, the decision was sustained by an Administrative Law Judge.

## Board of Nursing

Examples of disciplinary cases handled in 2005 on behalf of the Board of Nursing include the following:

- A professional nurse employed at a Denver hospital made over 350 withdrawals of meperidine, also known as Demerol, from the hospital medication dispensing system, and was summarily suspended.
- The Board denied the license of an applicant for a professional nursing license who had been convicted of vehicular homicide.
- A professional nurse was charged with more than thirty counts of various sex crimes in Arapahoe County and relinquished his license following a summary suspension. DNA test results confirmed that this nurse fathered two of his grandchildren.
- A licensed practical nurse employed at the Colorado Mental Health Institute at Pueblo sexually assaulted a patient in the supply room of the unit where the patient lived. This practical nurse relinquished his license following a summary suspension.
- Board attorneys obtained a relinquishment from a professional nurse who obtained a large quantity of Tylox and Vicodin from a patient under her care.
- Board attorneys, in a three day hearing, successfully defended a licensure denial action involving an applicant who had previously relinquished her license to practice nursing due to drug diversion and mental illness.
- A nurse aide at a long-term care facility in Windsor, Colorado surrendered his certificate after pleading guilty to sex assault against an at-risk adult.
- A certified nurse aide pled guilty to felony assault against an at-risk adult after severely shaking an elderly patient at a long-term care facility. Board attorneys filed charges against his license, and the aide defaulted.

*A professional nurse was charged with more than thirty counts of various sex crimes in Arapahoe County and relinquished his license following a summary suspension.*



## Nursing Home Administrators

- A nursing home administrator permanently relinquished her license due to allegations that she charged residents' accounts for items that were neither requested by, nor received by, the residents of the facility.
- The Board's attorney reached a settlement disciplining a nursing home administrator whose facility was cited with several deficiencies by the Colorado Department of Public Health and Environment ("CDPHE"). The cited deficiencies included findings that one resident with standing resuscitation orders was not provided with appropriate emergency assessments, interventions or cardiopulmonary resuscitation. These omissions contributed to the resident's death.

*A chiropractor went to a patient's house to give her a free therapeutic massage, but violated sexual boundaries. The chiropractor was placed on a stipulation and order by the Chiropractic Board.*

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## Professional Boards Unit

- A dentist agreed to place his license on permanent retirement status and agreed not to provide volunteer services in lieu of a revocation hearing. The dentist admitted that he provided substandard care to two patients. In one instance, the dentist was performing a root canal when the thermafil carrier went through the root and embedded in the patient's gum. He told the patient that the tooth could not be saved and she would need to return for extraction of the tooth. He never told her the thermafil carrier was still embedded in the gum area.
- A dentist agreed to a sixty-day day suspension, five years probation, and continuing education courses in dental ethics for practicing dentistry without a license and for insurance fraud. The dentist was knowingly practicing on an expired license and submitted insurance claims on his invalid license. His license was summarily suspended in this matter and only reinstated when he agreed to the Dental Board's terms for reinstatement of his license.
- A chiropractor went to a patient's house to give her a free therapeutic massage, but violated sexual boundaries. The chiropractor was placed on a stipulation and order by the Chiropractic Board and then plead guilty to a felony offense.

## Professional Boards Unit (cont.)

He subsequently violated the stipulation and order and the Board sought revocation of his license. He voluntarily relinquished his license with admissions to the offenses.

- A Pharmacist's license was summarily suspended. The case involves allegations against a "relief" pharmacist who was placed by a temporary agency in various pharmacy outlets throughout the state. Following his work at several pharmacy outlets, the pharmacist managers reported losses of large quantities of controlled substances. The pharmacist admitted to selling the controlled substances he had been taking from the various pharmacies.
- The Board denied the request for relicensure of a pharmacist and the case was defended by our office. Since his previous revocation, the applicant had been fired from three jobs; had five restraining orders against him; had two DUIs; a harassment conviction; a charge of obstructing justice and resisting arrest; and an active warrant for his arrest in Indiana for three felonies and two misdemeanors. The pharmacist eventually withdrew his license application.
- A land surveyor licensee did land survey and engineering work for a condominium complex in Winter Park. He performed substandard work in both areas by submitting engineering designs and land survey plats that contained so many errors (such as inadequate structural load) that the Town of Winter Park passed a resolution forbidding him from submitting any more documents until he deposited \$10,000 to pay for the Town employees' time to review his documents.
- An individual was operating a reading program where he used optometric instruments and vision therapy. The statute prohibits performing vision therapy and using optometric instruments without being licensed as an optometrist. This person has previously received two cease and desist orders for the same type of conduct. We are pursuing an injunction in District Court to enjoin him from practicing optometry without a license.
- An individual with six felony convictions who is currently incarcerated in the Department of Corrections applied for licensure as a cosmetologist. Licensure was denied and she requested a hearing on the license denial. We are handling the license denial hearing.

*A "relief" pharmacist's license was summarily suspended. Following his work, pharmacist managers reported losses of large quantities of controlled substances.*



- A counselor has been summarily suspended for about four years due to his refusal to submit to a mental status evaluation. He continued to practice, so an injunction prohibiting him from practicing counseling was obtained. He has continued to conduct counseling so we are now seeking contempt action by the court.
- The Board revoked the license of a psychologist who used substandard methods in treating a sexually abused child. These methods included allowing the child to run around his office nude and using dildos with the child. The psychologist appealed the case to the Court of Appeals and the court affirmed the Board on all but one minor aspect of its decision. The Colorado Supreme Court denied the petition for certiorari.
- A veterinarian who is licensed in Colorado, but was practicing in Florida pled guilty to stealing horses and cruelty to animals. The case was referred to our office for disciplinary action of revocation. The vet is going to relinquish her license in lieu of going to hearing on a revocation.
- The Board took action in 2005 against four CPAs and one public accounting firm in cases involving audits of financial statements. Charges were filed in two cases, but they settled a month before trial. All other cases were settled without the need to file charges.
- The sanctions obtained ranged from a permanent prohibition on audit and attest work (a restriction that keeps the C.P.A. from doing such work more than a revocation of his certificate would have obtained) to a \$1,000 fine. In the permanent prohibition case, which involved the most serious wrongdoing, the C.P.A. admitted violations of generally accepted auditing standards.
- Arthur Andersen lost its appeal to the Colorado Court of Appeals concerning the Board's subpoena ordering Andersen to produce documents relating to the Boston Chicken matter. Boston Chicken was headquartered in Golden, Colorado. The District Court judge's order enforcing the Board's subpoena was upheld. The Colorado Supreme Court denied Andersen's petition for certiorari.
- An auditor who was audited for four years of financial statements was charged with substandard audit work. He settled with the Board after charges were filed. He admitted substandard accounting work and agreed to a license restriction. He cannot work in the audit and attest area as long as he is licensed in Colorado.

*The Board  
revoked the  
license of a  
psychologist who  
used substandard  
methods in  
treating a sexually  
abused child.  
These methods  
included allowing  
the child to run  
around his office  
nude.*

- Discipline was imposed after charges were filed against an appraiser's license based on an appraisal of a property he conducted with another appraiser. The charges alleged, among other things, incorrect description of the subject property, incorrect identification of the subject's zoning, bad sales comparables, and bad adjustments to the comparable properties.
- Formal proceedings were instituted against a real estate broker. The Real Estate Commission adopted the Administrative Law Judge's recommendation and revoked his real estate broker's license due to misappropriation of funds. The Court of Appeals affirmed the Real Estate Commission's Order. A petition for Writ of Certiorari has been filed by the broker.
- An Order for Summary Suspension and Notice of Charges were filed against a realtor who owned a property management company and misappropriated client funds. The realtor who had been audited by the Real Estate Commission five times ultimately surrendered his license.
- A real estate broker is one of several defendants in a state criminal case in which it has been alleged that the defendants manufactured financial data in order to qualify illegal aliens to purchase homes. Discipline was imposed in which the broker agreed, among other things, to keep his real estate broker's license on inactive status until his pending criminal case(s) are resolved.
- The responsible broker for Homevision, LLC, voluntarily surrendered his real estate broker's license on July 1, 2005 in lieu of the summary suspension. He has admitted that he took approximately \$900,000.00 from escrow accounts.
- Charges were filed in Denver District Court seeking a permanent injunction against the unlicensed practice of a real estate broker. The broker agreed to sign a Stipulated Order for Injunction by Consent of the Parties and the permanent injunction was granted. Operating out of Roy, Utah, the broker obtained information from a public website regarding properties in Colorado whose owners planned to surrender in bankruptcy proceedings or whose properties were about to be foreclosed. He would then advertise those properties for rent in local newspapers. He would have the locks changed, and collect rent from the "tenant." Four different Colorado jurisdictions had received complaints. He was allegedly doing the same activities in Utah and Washington. The broker was recently indicted by the U.S. Attorney in Utah.



## Licensing Boards

Board	# OF CASES HANDLED THIS YEAR	NEW CASES OPENED THIS YEAR	CASES CLOSED THIS YEAR
MEDICAL EXAMINERS	137	76	69
NURSING	211	133	93
NURSE AIDES	33	27	15
NURSING HOME ADMINISTRATORS	27	20	10
DENTAL	68	38	45
CHIROPRACTIC	25	17	12
PHARMACY	48	35	18
ENGINEERS & LAND SURVEYORS	30	15	28
PLUMBING	13	5	5
ELECTRICAL	30	9	9
MIDWIVES	1	0	1
RESPIRATORY THERAPISTS	5	3	2
PHYSICAL THERAPISTS	5	3	2
OUTFITTERS	3	0	1
STATE PERSONNEL BOARD	0	0	0
OPTOMETRISTS	6	5	1
BARBERS & COSMETOLOGISTS	12	3	3
MARRIAGE & FAMILY THERAPISTS	3	0	2
LICENSED & CERTIFIED ADDICTIONS COUNSELORS	11	5	4
UNLICENSED PSYCHOTHERAPISTS - GRIEVANCE BOARD	22	8	15
LICENSED PROFESSIONAL COUNSELORS	13	3	5
PSYCHOLOGISTS	14	7	6
SOCIAL WORKERS	3	3	0
VETERINARIANS	16	9	9
ACCOUNTANTS	32	17	20
APPRAISERS	21	8	14
REAL ESTATE COMMISSION	56	40	28
<b>TOTALS</b>	<b>845</b>	<b>233</b>	<b>230</b>

*The Public Utilities Litigation Unit of the Attorney General's Office represents the Litigation Staff of the Public Utilities Commission and appears in litigated matters on behalf of the public interest to achieve fair utility rates.*

## Regulation of Public Utilities

The Public Utilities Commission ("PUC") regulates the rates, charges, services and facilities of public utilities within Colorado. The Public Utilities Litigation Unit of the Attorney General's Office ("PUC Litigation Unit") represents the Litigation Staff of the Public Utilities Commission ("Staff") and appears in litigated matters on behalf of the public interest to achieve fair utility rates for all types of customers and to ensure that adequate and reliable gas, electric, telephone, water, and motor carrier utility service is provided to all Coloradans.

In 2005, the PUC unit:

- Handled 96 administrative cases before the PUC on behalf of Staff in matters concerning natural gas, electric and water utilities.
- Handled 12 court and judicial review cases representing the Public Utilities Commission and the Commissioners thereof ("PUC").
- Handled 31 enforcement proceedings on behalf of Staff against motor carriers, including taxis, luxury limousines, airport shuttle vans, and household goods movers.
- Handled 12 matters concerning railroad crossings.
- Examples of the PUC Litigation Unit's significant cases include:
  - Represented Staff before the PUC in Qwest Corporation's application to deregulate all retail rates statewide, with the exception of emergency services.
  - Represented Staff on behalf of the public interest the Public Service Company of Colorado's ("Public Service") 2005 combined Phase I and Phase II gas rate case.
  - Represented the PUC before the United States Surface Transportation Board ("STB") and the United States District Court regarding whether Colorado Mountain Express ("CME") is subject to regulation by the PUC.
  - Represented Staff regarding Public Service's 2004, 2005 and 2006 electric quality of service plan.
  - Represented Staff before the PUC, and then the PUC on judicial review in federal court, in a matter concerning Western Wireless Holding Company, Inc. regarding rural phone service.



- Represented Staff in Public Service's 2004 Electric Phase II rate case.
- Represented the PUC in judicial review in the District Court for the District of Morgan County, Colorado regarding the City of Fort Morgan's attempt to obtain a reversal of the PUC decision awarding a certificate of public and convenience to K N Wattenberg Transmission, LLC to provide natural gas service to two industrial customers located within municipal boundaries.
- Represented Staff in an application to reverse a land use decision entered by the Board of County Commissioners for San Miguel County regarding a proposed upgrade to a transmission line that traverses the scenic mesas west of Telluride.
- Represented Staff in an investigation into whether Qwest failed to file certain interconnection agreements that it entered into with competitive local exchange carriers ("CLECs"), as required by the federal Telecommunications Act of 1996, state law, and PUC rules.
- Represented the PUC before the United States Court of Appeals for the Tenth Circuit in a case involving federally certificated motor vehicle carriers wherein the Rooker-Feldman doctrine is at issue.
- Represented Staff in Public Service's 2004 Least-Cost Plan application, which application included Public Service's request to construct a 750 Megawatt coal-fired electric generating plan at a cost in excess of \$1 billion.
- Represented Staff in obtaining two court-ordered injunctions against illegal intrastate transportation carriers and successfully argued for contempt sanctions against one such carrier for violating the court-ordered injunction.



The 2005 Business & Licensing Staff

## REGULATION OF THE FINANCIAL PROFESSIONS AND FINANCE-RELATED ACTIVITIES

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### Securities Brokers/Agents and Financial Advisors

- Handled 19 complex securities cases including 5 cases referred for disciplinary action against securities brokers who defrauded Colorado investors of money and who jeopardize the financial environment in our state.
- Assisted the Division of Securities' investigations by obtaining court orders enforcing administrative subpoenas in 5 cases.
- Filed 5 complex securities injunctive actions on behalf of the Division of Securities in the Denver District Court to enforce compliance with the Securities Act including:
- Recovered more than \$700,000 of investor funds from a variety of sources including settlements from Defendants in *Joseph v. XL Capital Partners, Inc., et al*, an unlicensed hedge fund that raised more than \$20 million mostly from Colorado investors. XL Capital fraudulently sold interests in limited liability partnerships the purpose of which was to speculate in securities markets with equities and options trading.
- Obtained rescission of the sales of securities by unlicensed salesmen to 25 Colorado investors who had invested more than \$500,000.
- Filed an injunctive action against a Kansas oil and gas company issuing securities to investors in Colorado and across the United States through the use of high pressure, boiler room sales practices. The Unit represents the Securities Commissioner in their enforcement action against a sophisticated type of scheme specifically designed by attorneys who advise issuers in how to avoid the application of the securities laws and the full disclosure requirements they impose. Investors in Colorado have lost their investment and were not told a variety of material facts including the prior failures of the company and the fact that the company employed felons to sell their securities.

*Recovered more than \$700,000 of investor funds.*



## Insurance Agents

- Received 157 referrals from the Division of Insurance. These matters varied widely within the broad area of insurance law, and were litigated before administrative law judges and the state district and appellate courts.
- Brought a licensing case against American National General Insurance Co. for failing to pay an automobile collision claim of its insured. After hearing, the administrative law judge ruled in favor of the Division as advocated by the Unit's attorney in determining ANGI's restrictions to the definition of the term "insured" did not comply with Colorado law, and imposed a civil penalty of \$1,000 and ordered ANGI to pay their insured's collision claim.
- Represented the Division in entering a cease and desist order against a title insurance producer due to the misappropriation of nearly \$1,000,000 of escrowed funds. Obtained through negotiation the revocation of another producer's license in connection with this same title company.
- Represented the Division in the Denver District Court in a declaratory relief action filed by PacifiCare of Colorado that sought a determination under Colorado's Prompt Pay Act. Successfully obtained a ruling from the District Judge in favor of the Division's interpretation of the Act that provided faster payment of insured claims. This was a significant victory for Colorado insureds.
- Represented the Division in defending a declaratory relief action filed in the Gunnison District Court brought by a licensed bail bond agent who sought a restrictive interpretation of the definition of "bail bond agent." After hearing, the Judge ruled in favor of the Division's interpretation.

*Entered a cease and desist order against a title insurance producer due to the misappropriation of nearly \$1,000,000 of escrowed funds.*

## Bail Bond Agents

- Handled over 44 cases against bail bondsmen who defrauded consumers out of money.
- Examples of bail bond cases handled in 2005 on behalf of the Division of Insurance include the following:
  - Charges were brought against several bail bond agents who were convicted of felonies.
  - Other bail bond matters involved agents who failed to return collateral. After hearing, the administrative law judge found this conduct to be sufficient to suspend these agents' licenses rejecting their arguments that they did not benefit from the failure to return collateral.

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## Financial Services Commissioner and Banking Commissioner

Unit attorneys represented the Division of Financial Services in a contested liquidation of a Colorado credit union.



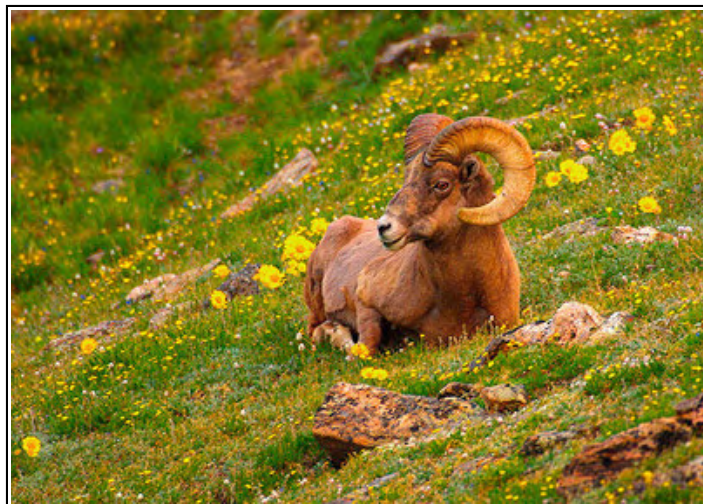
Business & Licensing attorneys prepare for a case



# REGULATION OF AGRICULTURAL AND ANIMAL-RELATED INTERESTS

## Department of Agriculture

- Handled at least 28 new cases on behalf of the Department involving the overall agricultural regulation of plants and animals.
- Examples of accomplishments in 2005 include the following:
  - Defended the Department against claims brought by elk breeders whose elk were exterminated as a result of chronic wasting disease. The elk breeders claimed they were not paid fairly when their elk were exterminated. The trial court ruled in favor of the Department and an appeal in the case is pending.
  - Continued to provide legal advice concerning chronic wasting disease and the regulation of livestock, including rendering advice on the legality of the double fencing requirement for elk breeders' operations and state liability under the state's game damage laws.
  - Advised the Department in on-going negotiations with the Motherwell Ranch concerning chronic wasting disease and the possibility that elk on the Motherwell may have been contaminated.
  - Represented the Department in an on-going investigation into a Texas company that has been shipping unregistered pesticides to Colorado distributors for sale in this state.



Colorado's State Animal, The Rocky Mountain Bighorn Sheep

## MINED LAND RECLAMATION BOARD

The unit represents the Mined Land Reclamation Board which holds hearings on disputed reclamation permit applications for hardrock minerals and construction materials (primarily sand and gravel) operations, adopts rules and regulations concerning those activities, and hears disciplinary matters concerning the failure of mine operators to abide by those rules and regulations. This year, the Unit's attorney assisted the Colorado Mined Land

Reclamation Board in finishing hearings resolving nearly 500 outstanding mineral prospecting claims. In response to a request from the State Auditor's Office, the Division of Minerals Geology identified approximately 500 outstanding "Notices of Intent to Conduct Prospecting" that remained open several years after their filing. The Notices of Intent allow prospectors to conduct tests, including drilling, to determine if minerals are present in commercial

quantities. The prospector is required to post a bond to ensure site reclamation, which in many cases involves properly abandoning drill holes and revegetating disturbed areas. The hearings were instituted to "clear up" the outstanding Notices of Intent. Most of the hearings were concluded by terminating the outstanding Notices of Intent and forfeiting the existing bonds.

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## DEPARTMENT OF REVENUE

- The Department of Revenue defended 12 driver appeals and appealed 17 adverse decisions from district courts around the State in the Court of Appeals.
- Provided legal advice to the Department of Revenue in bankruptcy cases concerning determinations of priority tax years, discharge procedural matters and exemptions from taxation.
- Actively handled approximately 312 Chapter 11, 7 and 13 bankruptcies. Received notices in four times as many cases.
- Defended the Tax Conferee's and the executive director of the Department of Revenue's decisions.
- Handled numerous tax protester claims in district courts around the State.
- Provided legal advice on tax seizures to force payment of past due taxes.
- Sought temporary restraining orders on tax issues.



## Major Cases Handled

- Revenue revoked license of Trappers Lake Lodge, presently under appeal.
- ***Thorpe v. State of Colorado, Department of Revenue***: The Office of the Attorney General and Department of Revenue prevailed in this privileges and immunities / dormant Commerce Clause challenge to the TABOR refund process in both the Colorado Court of Appeals and in the United States Supreme Court. These decisions leave intact the choices made by the legislature on how to refund TABOR excess taxes and fees and on allowing Colorado to give TABOR refunds to full year Colorado residents.
- ***The Kroger Co. v. Colorado Department of Revenue*** – A challenge to Colorado's unitary tax criteria and definitions; Denver District Court decided that the legislature intended the substantial use test to be a numeric test and that Kroger's use of subsidiaries' proprietary materials was not a substantial use of other proprietary materials. The parties settled after trial.
- ***McLane Western, Inc. v. Department of Revenue***, 2005 WL 1038994 (Colo. App., 2005) - This is a U.S. Commerce Clause challenge to Colorado's tobacco products tax by a national tobacco distributor. The Court of Appeals held that excise tax imposed by the State on the sale, use, consumption, handling, or distribution of certain tobacco products in Colorado did not violate the Commerce Clause. The Colorado Supreme Court denied the certiorari petition filed by the tobacco distributor.
- ***In Ameristar Casino Black Hawk, Inc.*** – Successfully defended Colo. Const. art. XVIII, sec. 9(3) (c) to determine how to calculate gaming space.
- ***Terry Lee Hibbs v. Colorado Department of Revenue***—In the first published case concerning a drunk commercial driver, the Colorado Supreme Court reinstated Revenue's revocation of a drunk commercial driver.
- ***In Public Auto Auction and Family Trucks & Vans*** – Summary suspensions of used motor vehicle dealer licenses were filed. Public Auto Auction sold vehicles for Catholic Charities, the City of Sheridan, the Car Program, Vehicle Donation Processing Center and Lost & Found without properly remitting the sale price to the charities and the City of Sheridan. Board concluded that seven charges were confessed or sustained. Fines and other conditions were imposed on Public Auto Auction. Only it expressly lifted the summary suspensions.

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The Attorney General's 2005 Annual Report was prepared by  
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