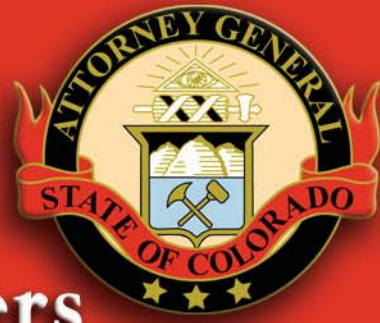


Colorado

Attorney General

John W. Suthers



2006

ANNUAL REPORT

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Attorney General John W. Suthers

On January 4, 2005, John W. Suthers was appointed as Colorado's 37th Attorney General. In November of 2006, the voters of Colorado elected Attorney General Suthers by a large margin to serve a full, four-year term. As Attorney General, Suthers is charged with representing and defending the interests of the People of the State of Colorado, and serves as chief legal counsel and advisor to state government, its statewide elected officials, and its many state agencies, boards, and commissions.



Attorney General Suthers 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. From 1977 to 1981, he served as a deputy and chief deputy district attorney in Colorado Springs. From September of 1979 to January of 1981, he headed the Economic Crime Division of the DA's office and co-authored a nationally published book on consumer fraud and white-collar crime.

In January of 1981, Mr. Suthers entered private practice as a litigation partner in Colorado Springs firm of Sparks Dix, P.C. He remained with the firm until November of 1988, when he ran against and defeated the incumbent district attorney for the 4th Judicial District. He was elected to a second term as district attorney in 1992. After serving two terms in office, he returned to Sparks Dix, P.C. as senior counsel in charge of the firm's litigation section.

In 1999, Mr. Suthers was appointed executive director of the Colorado Department of Corrections by Governor Bill Owens. As head of the state's correctional system, he oversaw an organization with almost 6,000 employees and an annual operating budget of approximately \$500 million.

On July 30, 2001, Mr. Suthers was nominated by President George W. Bush to be the United States Attorney for the District of Colorado. He was unanimously confirmed by the U.S. Senate, and represented the United States in all criminal and civil matters within the District.

In his tenure as Attorney General, Mr. Suthers has founded a safe surfing initiative to protect Colorado's children from internet predators. He also has convened a Mortgage and Foreclosure Fraud Task Force which has led to several pieces of legislation designed to combat mortgage and foreclosure fraud. Attorney General Suthers has been a champion for Colorado's environment, leading the charge to reclaim damages for the Rocky Mountain Arsenal superfund site.

He serves as co-chair of the National Association of Attorneys General Criminal Law Committee, as chair of the National Association of Attorneys General Campus Safety Committee, and as a member of the U.S. Attorney General's Executive Working Group.

Mr. Suthers has served on the board of numerous civic organizations. He served as president of the El Paso County Bar Association in 1990–91, president of the Colorado District Attorney's Council in 1994–95, and senior vice president of the Colorado Bar Association in 1996–97. In 1992, Suthers was appointed by the Colorado legislature to serve as a delegate to the National Conference on Uniform State Laws, serving as such until January of 1997. In the summer of 2000, Mr. Suthers received a Gates Foundation Fellowship to attend the Government Executives Program at Harvard University's Kennedy School of Government.

John and his wife, Janet, have been married for 31 years and have two daughters, Alison, a recent graduate of Georgetown University Law School, and Kate, a Lieutenant J.G. in the United States Navy.

Cynthia Coffman

CHIEF DEPUTY ATTORNEY GENERAL

Cynthia Honssinger Coffman serves as chief of staff for the Department of Law's legal and administrative support team. Mrs. Coffman joined the Attorney General's Office in March of 2005 after serving as chief legal counsel to Colorado Governor Bill Owens.

Prior to her work at the State Capitol, Ms. Coffman worked with the Colorado Department of Public Health and Environment. In that position, she oversaw legal and regulatory issues and worked extensively on the state's bioterrorism preparedness efforts and emergency planning.

Coffman is 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.

Daniel Domenico

SOLICITOR GENERAL

Attorney General Suthers appointed Dan Domenico as Solicitor General of Colorado in April of 2006. Before joining the Office of the Attorney General, Domenico was special assistant to the solicitor of the United States Department of the Interior. In that role, he advised the Secretary and senior management of the Department on a wide range of matters relating to National Parks, federal land, water resources, energy production, and other issues important to Coloradans and citizens of the American West.

Prior to his work at the Interior Department, Domenico practiced for several years in the Denver and Boulder offices of the national law firm Hogan & Hartson. He also clerked for Judge Tim Tymkovich of the United States Court of Appeals for the 10th Circuit (himself a former Colorado Solicitor General), and also worked with U.S. Senator John Thune.

Domenico, a Boulder native, received his undergraduate degree, magna cum laude, from Georgetown University. He attended the University of Virginia School of Law, where he served as editor for two academic journals, including the Virginia Law Review, and was elected to the Order of the Coif.

Jason Dunn

DEPUTY ATTORNEY GENERAL FOR LEGAL POLICY AND
ASSISTANT SOLICITOR GENERAL

Jason Dunn is senior policy advisor to the Attorney General and office liaison to the Governor, General Assembly, and local governments. Dunn also serves as assistant solicitor general for civil appeals, litigating matters on behalf of the State, and periodically representing the Attorney General on the Initiative Title Setting Review Board.

Dunn joined the Department of Law in 2005 from the private sector, having practiced in public policy and water law for Hale Friesen, LLP, in Denver. Dunn began his legal career as a law clerk to Colorado Supreme Court Justice Nathan Coats, followed by private practice with a boutique water law firm in Boulder.

Dunn received his bachelor of science, masters in public administration, and law degrees from the University of Colorado. During law school, Dunn was class president and member of the Colorado Journal of International Environment Law and Policy.

Dunn serves on the Judicial Performance Commission for the 17th Judicial District, and has served as vice-chairman of the Broomfield Land Use Review Commission.

Consumer Protection Section

The Colorado Attorney General's Office, through its Consumer Protection Section, protects Colorado consumers and businesses against fraud and maintains a competitive business environment in the state. The Section enforces state and federal consumer protection laws, state and federal antitrust laws, and state laws on consumer lending, predatory lending, debt collection, rent-to-own, and credit repair. Section members work to educate consumers through outreach and educational programs, and also implement and enforce provisions of the tobacco master settlement agreements. Finally, the Section advocates for residential, small business, and agricultural public utility ratepayers.

Business Regulation Unit

The Business Regulation Unit enforces a variety of state and federal consumer protection statutes. In order to maximize limited resources, the Unit 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 Attorney General enforcement of the Colorado No-Call List Act, the Colorado Charitable Solicitations Act, the Colorado law addressing unconscionable mortgage loans, and the Colorado Foreclosure Protection Act.

The Business Regulation Unit's enforcement efforts have focused on pursuing individuals and businesses for false advertising and other consumer protection and antitrust violations. These enforcement efforts have also been complemented by the Attorney General's consumer complaint intake and education programs. Taken together, these efforts have sought to protect consumers, provide a fair market for competitors, and educate consumers about ways to protect themselves from noncompliant businesses.

MORTGAGE AND FORECLOSURE FRAUD

Following a dramatic rise in foreclosures that made Colorado among the hardest-hit in the nation, Attorney General Suthers convened the Mortgage and Foreclosure Fraud Task Force in 2005. The task force included members of law enforcement, county officials, mortgage lenders, mortgage brokers, real estate attorneys, and others. Participants shared their experiences in regard to this growing problem and discussed coordinated solutions.

In 2006, Attorney General Suthers worked with the General Assembly to craft legislation giving his office the enforcement tools necessary to combat the most prevalent fraudulent conduct in mortgage and foreclosure relief. Through the Task Force, the Attorney General has laid the groundwork for co-

ordination of enforcement efforts among various law enforcement and regulatory agencies.

In addition, the Attorney General has commenced numerous investigations into mortgage and foreclosure-related fraud, including:

- *Amerquest*: Colorado participated with 49 other states in concluding a consumer protection investigation against Amerquest Mortgage Company. That comprehensive investigation led to a settlement with Colorado and the other states, in which Amerquest, the nation's largest sub-prime lender, agreed to pay \$295 million in restitution to consumers, and to make sweeping reforms to its lending practices. Consumer restitution is expected to begin in early 2007.
- *High Performance Real Estate*: After an extensive investigation, the Attorney General reached a settlement with a real estate broker and his brokerage firm that were using high cost installment land contracts to place low income consumers in properties that were beyond their means. The individuals and real estate firm will agree to an Assurance of Discontinuance that prohibits them from using these instruments in their home sales. The Assurance will also require the parties to pay \$84,000 in restitution and attorney fees.
- The Attorney General has also undertaken a review of several widely distributed advertisements that have been used to market high risk loans. As a

result of this advertisement review, the Attorney General has issued subpoenas to a number of mortgage brokerage firms. Review continues of their documents and compliance with the mortgage brokerage laws.

The Attorney General has received hundreds of complaints through the Task Force pertaining to mortgage brokerage firms and loan originators. The staff of the Consumer Protection Section has continued to review each complaint in an attempt to identify specific patterns of fraud and deceptive practices. As a result of this complaint intake, the Attorney General commenced investigations of four mortgage brokerage firms and the brokers. The brokers are believed to have sold high risk loans featuring an interest rate that changes monthly, negative amortization, hidden costs, and substantial prepayment penalties.

On July 1, 2006, the Foreclosure Protection Act became effective. This Act gives homeowners greater protection from consultants who seek to extract prepayment or, worse, title to, or a lien on, the property in foreclosure. During 2006, the Attorney General's office issued numerous cease and desist orders to companies that failed to comply with this new law.

NO-CALL ENFORCEMENT

The Business Regulation Unit enforces the Colorado No-Call List. Since going into effect on July 1, 2002, more than 2.7 million Coloradans have added their residential phone numbers to the List. Since that time, consumers have filed nearly

47,000 complaints alleging violations of the No-Call List Act. Enforcement efforts have been continuous since enactment of this popular and protective law.

Persistent enforcement of the No-Call List by the Attorney General's Office has been successful in bringing telemarketers into compliance and protecting the privacy of Colorado homes. The daily average number of complaints dropped from 206 complaints per day in the first month of the program, to 15 per day in 2006 and 9 per day during the December of that year.

OTHER DECEPTIVE TRADE PRACTICES

The Business Regulation Unit kept extremely busy during 2006 on a variety of other consumer protection enforcement matters. Some highlights include:

- *General Steel*: During 2006, the Attorney General reached a comprehensive, \$4.5 million settlement with General Steel. Under the settlement, \$4 million will be distributed to consumers who had been previously identified during the litigation. The remaining \$500,000 will be paid as costs and civil penalties, and will be split between the Attorney General's Office and the Sacramento District Attorney's Office, which also settled its claims against General Steel as part of the settlement.
- *MorphCorp*: Settled a lawsuit involving allegedly deceptive advertising and sales of "Family Yearbooks" over the Internet. Under the settlement, the company agreed to pay a \$50,000 civil penalty and to discontinue advertising
- and publication of these yearbooks.
- *Thermal Advantage*: Reached a settlement with Thermal Advantage, a local company that falsely claimed homeowners could have their windows replaced for free if they agreed to participate in an energy saving study.
- *Discount Health Plans*: The Attorney General continued to pursue two major investigations of companies offering discount health plans to determine whether they are complying with the disclosures required by the Consumer Protection Act.
- *Poster Sales*: The Attorney General's Office is also investigating whether an out-of-state company is falsely posing as a government agency to convince businesses to buy official-looking posters that must be posted in a workplace or restaurant under federal or state law.

COLORADO CONSUMER LINE

The Consumer Protection Unit 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 for one-stop access to consumer advocates, information on filing consumer complaints, answers to frequently asked questions, and referrals to the BBBs for complaint mediation and business reliability reports.

CCL/BBB system statistics for 2006:

- More than 847,222 BBB “business reliability reports” were requested over the phone and through the web.
- Approximately 51,592 consumer calls were made to the CCL.
- More than 22,405 consumer complaints against businesses were resolved or closed.
- More than 4,054 callers accessed the CCL’s “frequently asked questions” assistance feature.



Attorney General Suthers helps shred documents at the second annual “Fight Fraud – Shred Instead,” an identity theft prevention effort hosted by his office and AARP ElderWatch.

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 2006 continued to focus 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. The Attorney General and AARP ElderWatch also embarked on a multi-city “Senior Fraud Alert Tour” to talk with seniors about elder fraud issues.

PREVENTING IDENTITY THEFT

The Unit continues to maintain and update a comprehensive, informational web page for Colorado consumers, businesses, and law enforcement agencies to deal with identity theft. The Office has undertaken a number of initiatives designed primarily to educate the public on the risks and dangers of identity theft. These efforts include an active public outreach component to warn consumers of scams.

CHARITABLE SOLICITATIONS

The Consumer Protection Section filed four lawsuits against charities and various individuals who solicited funds in violation of the Colorado Charitable Solicitations Act in 2006. The Attorney General has also taken action against one of the nation’s largest paid solicitors, Xentel, in order to bring it into compliance with the Colorado Charitable Solicitations Act.

Investigations of other noncompliant charities and paid solicitors continue, particularly in the realm of car donations. In addition, the Attorney General will continue to work with the Secretary of State's office to identify noncompliant charities and educate the public about how to give wisely. These enforcement efforts fulfill the goal of protecting and educating Colorado donors, and providing a level playing field for those charities that solicit donations in accordance with the Act.

MISCELLANEOUS INVESTIGATIONS

In addition to the specific cases and investigations noted above, the Unit is engaged in a large number of other consumer protection investigations, including business opportunity scams, false health claims and money back guarantees, auto repair scams, unauthorized use of private mailboxes, and consent decree enforcement.

WORKING WITH OTHER STATE ATTORNEYS GENERAL

Attorney General Suthers works with other states to protect competition in the marketplace. The Office participates in settlements of national advertising issues affecting Colorado consumers. One such multi-state settlement was with Banco Popular Leasing, Inc. in connection with a widespread telecommunications fraud involving NorVergence, Inc., a bankrupt New Jersey-based telephone equipment and service company. This settlement will relieve 11 Colorado businesses from \$340,000 of payments on their leases.

NATIONAL CONSUMER ISSUES

The office participated in national discussions on other important consumer protection issues, including:

- Joined with several states to urge the nation's largest wireless telephone companies to meet and discuss security measures to protect confidential customer information.
- Signed on to comments for the United States Department of Transportation regarding potential rule revisions regarding airline advertising.
- Signed on to comments urging strong protections by the Federal Communications Commission of consumers' confidential information maintained by the telephone industry.
- Assisting the FTC in the investigation of a Colorado-based, national debt management firm.

Antitrust Unit

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 Unit also works closely with other state attorneys general in investigating and prosecuting national antitrust violations that have a particular impact on Colorado consumers.

PRESCRIPTION DRUGS

Many of the Unit's antitrust resources are focused on the critical issue of competition in the prescription drug industry; specifically, agreements to delay the introduction of low-cost, generic alternatives to brand name pharmaceuticals

COMPUTER COMPONENTS

Colorado joined several other states in filing a national antitrust case against numerous manufacturers of dynamic random access memory chips in an alleged price fixing conspiracy that artificially raised the price of this critical component in personal and business computers.

Tobacco Litigation Unit

The Attorney General's Office is responsible for enforcing the Tobacco Master Settlement Agreement (MSA) and Smokeless Tobacco Master Settlement Agreement (STMSA). The Office also enforces the state escrow fund statute to prevent non-signatory tobacco manufacturers from taking advantage of marketing restrictions imposed by the settlements.

Significant activities in 2006 included:

MASTER SETTLEMENT ENFORCEMENT

The Attorney General's Office enforces the Master Settlement Agreement, and works with other Attorneys General to ensure tobacco company compliance and encourage other tobacco companies to join the MSA.

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).

PUBLIC HEALTH INITIATIVES AND PROTECTING COLORADO'S YOUTH

The office joined with other Attorneys General to enter into Assurances of Voluntary Compliance in order to address public health issues and curb cigarettes sales to minors.

LITIGATION

The Unit initiated proceeding against Participating Manufacturers on the issues of market share loss and diligent enforcement to protect the MSA payment stream from disruption.

Uniform Consumer Credit Code

This Unit enforces five credit-related laws on the state level – the Uniform Consumer Credit Code, the Deferred Deposit Loan Act, the Fair Debt Collection Practices Act, the Credit Services Organization Act, and the Rental Purchase Agreement Act. In addition to enforcement activities, the Unit licenses and regulates finance companies under the Uniform Consumer Credit Code ("UCCC") and collection agencies under the Colo-

rado Fair Debt Collection Practices Act ("CFDCPA").

LENDING PRACTICES

The UCCC Unit oversaw the activities of 2,523 supervised lenders and issued 834 new licenses. Unit members conducted 800 compliance examinations of supervised lenders and ordered them to refund overcharges to Colorado consumers. The Attorney General's Office investigated 294 written consumer complaints against licensed lenders and other creditors. All told, the office obtained \$762,684 in consumer refunds and restitution and over \$157,000 in penalties, fines, cost reimbursement, and custodial funds for credit education and enforcement purposes.

INTERNET LENDING

The Unit spent part of 2006 investigating and resolving several cases involving out-of-state lenders not licensed and whose lending terms and practices did 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.

AUTOMOBILE FINANCING

The Unit investigated related companies that take assignment of, or service, subprime automobile loans, for potential UCCC violations, including allegations of improper collection and repossession activity. Members also entered into an

Assurance of Discontinuance with a used car dealer for failure to file notification, improper repossessions and right to cure notices, and charging excess late fees. The auto dealer paid a \$5,000 penalty.

PAYDAY LENDING

In 2006, the Unit recovered \$125,000 from payday lenders for violations Colorado law. Investigations are ongoing into the practices of numerous other payday lenders.

MORTGAGE LENDING

The Attorney General's Office 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 2007.

SMALL INSTALLMENT LENDING

Conducted UCCC compliance examinations of lenders licensed to make small installment loans under House Bill 04-1394. Compliance examinations have focused on whether the borrowers had sufficient ability to repay the loans as written, as data collected shows frequent and continuous refinances of the original loan amount. Approximately \$20,340 in consumer refunds and credits were ordered.

COLLECTION AGENCIES

During 2006, the Unit handled 824 written complaints against collection agencies and additional telephone complaints and inquiries. Unit members oversaw the activities of 608 licensed collection agencies engaged in the collection of debts in Colorado. Unit members resolved, investigated, filed, or defended 85 enforcement actions and investigations under the CFDCPA, while collecting \$124,250 in fines, penalties, cost reimbursements, and credit education and enforcement funds.

DEBT BUYERS

The Unit issued 86 cease and desist notices to unlicensed debt collectors to ensure compliance with Colorado law. Unit members also executed stipulations with companies that buy defaulted debt or uncollected judgments. A group of five related companies dismissed a lawsuit they filed challenging the application of Colorado's collection laws to their activities and paid \$50,000 to the State.

CHILD SUPPORT COLLECTIONS

The Unit educated collection agencies about House Bill 06-1066, a new law that provides protections for custodial parents who contract with private collection agencies to collect overdue child support. The Unit also adopted rules, effective August 30, 2006, implementing House Bill 06-1066 on consumer rights contractual language and accounting procedures.

OFFICE OF CONSUMER COUNSEL

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 ("Commission" or "PUC") and in other forums on issues concerning electricity, natural gas, and telephone issues. In 2006, the Unit appeared or worked on behalf of the OCC in 97 matters before the PUC, including protests, interventions, and rulemaking activities.

Criminal Justice Section

The Criminal Justice Section of the Colorado Attorney General's Office assists local prosecutors and law enforcement agencies throughout the state. Sections members assist with matters that cross jurisdictional lines, including presenting cases to the Statewide Grand Jury and serving as special district attorneys when requested by a DA. The Section provides special assistance to district attorneys in death penalty and gang activity cases, and has statutory authority to prosecute white-collar crimes and multi-jurisdictional matters.

Additionally, the Criminal Justice Section coordinates the prosecution of foreign fugitives and represents the Department of Public Safety. The Colorado Peace Officer Standards and Training Board is also administered through this Section.

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 statewide grand jury, allowing for the prosecution of criminal cases occurring over multiple judicial districts in the state. The Special Prosecutions unit, comprised of four attorneys, two investigators, and one support staff employee, handles all multi-jurisdictional matters, as well as special investigations which

may be referred by other state agencies or the governor. Unit attorneys prosecute cases throughout Colorado under the auspices of the Attorney General, or as specially appointed deputy district attorneys in the twenty-two judicial districts.

For example, in 2006, the unit indicted ten defendants in Arapahoe County for charges relating to the fraudulent operation of bingo halls. A lengthy investigation and grand jury review also resulted in the indictment of twenty defendants in an auto theft ring in the Durango area. Eleven defendants were indicted in a widespread burglary ring involving numerous stores and artworks throughout five Front Range counties. A mother-daughter team was convicted of multiple felonies relating to the theft of horses in El Paso County.

Protecting Colorado's citizens from the fraudulent use of state funds is an important function for the special prosecutions unit. Thirteen cases of tax fraud were conducted and resulted in more than \$154,000 in restitution to the citizens of Colorado. Sixteen persons were convicted of felonies for unemployment insurance fraud, with more than \$150,000 in restitution. Fourteen cases of workers' compensation insurance fraud resulted in convictions with \$227,446 ordered in restitution. One of these cases involved a temporary employment agency forging insurance certificates to avoid paying premiums. The

agency head was found guilty at trial by a Weld County jury.

The Criminal Justice Section also helps protect Colorado's natural resources by enforcing environmental laws. The Environmental Crimes Unit filed five environmental crimes prosecutions in 2006. Among these was the case of William Walker, who operated a septage/grease trap waste hauling business called Root Master in Montrose. The investigation showed that for at least two years, Walker had been disposing of the waste he collected by dumping his septic truck tank into a storm drain that emptied into a flowing creek which drained into the Uncompahgre River. The Attorney General works closely with the U.S. Attorney's Office and both state and federal agencies in pursuing these types of crimes.

Securities Fraud

Under Colorado law, the Attorney Gen-

eral is authorized to prosecute Securities Fraud. In doing so, the Securities Fraud Unit works closely with the Colorado Division of Securities and other law enforcement agencies around the state. The staff of the unit consists of two attorneys, two investigators, and a paralegal dedicated full-time to securities fraud cases.

Twenty-one investigations were opened in 2006. Of these, fifteen were initiated by the unit's investigators, and the remainder was referred to the Attorney General's office by the Division of Securities. As a result, eight felony cases were filed in various counties around the state. Twelve felony convictions were obtained in 2006 and nine defendants were sentenced. One defendant, Ray Morris, received 48 years in prison for an investment scam involving more than \$2 million. The total restitution ordered for victims of Securities Fraud cases exceeded \$4.6 million.

Insurance Fraud

For the majority of 2006, the Insurance Fraud Unit consisted of one attorney, one investigator, and one half-time administrative assistant. In 2006, Senate Bill 38 provided funding for an additional attorney, three additional investigators, and one unit paralegal. As of October 2006, the three investigators were hired and a paralegal was hired in November 2006. The additional attorney has been hired and will begin with the unit in January 2007.



Attorney General Suthers convenes the first meeting of the Colorado Methamphetamine Task Force.

During 2006, the insurance fraud unit received 358 referrals of potential criminal cases relating to insurance fraud. As a result, the unit opened 36 new felony investigations, most of which are currently ongoing. Two of the cases opened in 2006 have already been filed and are currently being litigated the state courts. The unit has fourteen additional open investigations (opened prior to 2006), some involving multiple potential defendants.

In 2006, the Insurance Fraud Unit filed seven cases by either summons or arrest warrant. Additionally, the unit utilized the statewide grand jury on a multi-jurisdictional auto theft ring which resulted in an indictment in January 2006, leading to the arrests of fourteen individuals on felony charges. The auto theft cases are now being handled by the Adams County District Attorney's Office. Two of those defendants have entered guilty pleas in Adams County.

During 2006, the unit obtained six felony convictions, one misdemeanor conviction, and five probation revocations. As a result of the convictions, the unit achieved restitution orders totaling more than \$179,000 and orders for fines and costs in excess of \$22,000.

Medicaid Fraud

More than 429,200 Colorado citizens received Medicaid benefits during 2006. In total, the State contributed approximately \$3.3 billion to persons qualifying for aid. The goal of the Medicaid Fraud unit is to preserve this fund for those in need

and to protect it against fraud. The unit investigates and prosecutes complaints of neglect and abuse in Medicaid funded long-term care facilities. Two attorneys, seven investigators, one auditor and one support staff employee accomplish the work of the unit.

In 2006, the unit filed ten new cases of fraud, including spurious home health care claims, durable medical equipment fraud, home health care fraud, crimes against at-risk adults, and other billing fraud. Nine criminal convictions and eight civil settlements were obtained, with recoveries totaling more than \$2.2 million. Sample convictions include: A mother/daughter scam to bill for home health services that were never provided, a nursing home business manager manipulating the books to overbill Medicaid for nursing home care, and a transportation provider billing for rides that were not provided.

The unit also works closely with federal and other state authorities on broad-ranging fraud cases that cover multiple jurisdictions. Eight of these cases resulted in regional and global settlements that included Colorado activities.

Capital Crimes Unit

This unit, consisting of two attorneys, an investigator, and one support staff member, provides assistance to local district attorneys on homicides might involve the death penalty. This type of litigation becomes very complex and the unit contributes its expertise to augment local resources. The attorneys have as-

sisted in grand jury investigations, legal research, motions practice, and other court proceedings in various jurisdictions in the state. During 2006, considerable efforts were also devoted to assisting multiple district attorneys on current and cold-case investigations, including post-conviction proceedings in *People v. Montour*, in which, the defendant pled guilty to the murder of a prison guard.

Foreign Prosecutions Unit

Foreign prosecutions occur when a defendant who is a Mexican national has fled the United States and can be subject to prosecution by Mexican authorities in Mexico under Article IV of the Mexican Penal Code. These proceedings are based on reports submitted by law enforcement agencies in the United States. Because there is significant migration of persons from Mexico to Colorado and back, this issue arises with some regularity. 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 Mexican officials to facilitate these prosecutions. Three examples from 2006 include:

- In 2006, the Unit filed a request for prosecution in the shooting death of Jeffrey Garrett near Glenwood Springs. The defendant, Oscar Hoyos de la Cruz fled after the shooting and was caught and sentenced by the Mexican courts. He is serving a three year prison term in Mexico.

- Lazaro Rey Muro was also apprehended in 2006 for a 1999 homicide that resulted from an argument with his then roommate. The disagreement turned so violent that the victim, Joel Gonzalez-Lopez, was stabbed over 150 times.
- Manuel Enrique Muela-Luna was sentenced in May 2006 for the 1992 Larimer County homicide of 26 year old Luis Armendariz. After taking Armendariz to an area near Estes Park, Muela-Luna fatally shot the victim in the back of the head and set the body on fire to destroy the evidence. The fugitive was apprehended in Mexico and is serving his sentence in a Mexican federal prison.

A fourth case is being investigated by the Adams County Sheriff's Office and the 17th Judicial District Attorney's Office, involving three victims who were shot, one fatally, in unincorporated Adams County. The perpetrator is believed to have fled to Mexico.

In addition to criminal proceedings, this unit represented the Attorney General in numerous training sessions. These include a Mexico City presentation on foreign prosecutions and the collaborative working relationship and successful case presentation efforts in Colorado, the Attorneys General Border Conference in Arizona, and the Colorado Organization for Victims' Assistance conference in Keystone, Colorado.

Victim Assistance Program

This program provides information to victims of violent crimes as required by Colorado statutes. During 2006, the Victim Assistance Program provided notifications to 1,701 victims of violent crimes while the convictions and sentences in the offenders' cases were on appeal. Other services provided to crime victims were 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.

The Victim Services Coordinator is also a liaison for the Department of Law to the statewide network of victim services. She represents the Office with statewide task forces on human trafficking, post-sentencing victim services, District Attorney Victim Witness Coordinators, Victim Rights Amendment legislative working groups. The coordinator serves on grant funding boards for VALE and DAAP, and works on other initiatives to improve services to crime victims.

Colorado Peace Officer Standards and Training Board

The Colorado Peace Officer Standards and Training Board (POST) manages the training and certification of 14,000 active peace officers and numerous reserve peace officers appointed by Colorado law enforcement agencies. The POST staff continues to improve the certification

and training records of Colorado peace officers, most recently through a newly acquired computer software program, *Crown Pointe Technologies*.

The POST staff is working with the State Archives Office in the development of a project to scan and electronically index all Colorado Peace Officer Certification Files. This program will allow POST to import all hard copy files into a digitally imaged software program. POST documents will be indexed and divided into several filing areas.

During 2006, POST pursued and received preliminary approval for a training grant from the Colorado Department of Transportation (CDOT). The grant will provide funding for the continuance of "POST/ADL Anti-Bias Training for Law Enforcement Officers". Coupled with a grant awarded earlier in the year by the Denver Foundation, a web-based program will be designed and implemented to address the same core competencies and student outcomes as the in-class program. The training will be available on the Internet to any officer at his or her convenience. Funding through CDOT will improve and extend the program through June 2008.

Additionally, the grant will allow funding for POST to provide a Colorado Peace Officer Identification Card to every peace officer certified in the state. Each POST ID Card, which is secure and verifiable, will feature a Bar Code containing the peace officer's personal information and certification number, and will be easily scanned at POST funded training courses.

POST staff and the POST Board training sub-committee worked diligently to complete the second grant funding process. The sub-committee's grant funding recommendations were presented to, and accepted by, the POST Board on April 21, 2006. The Board approved training grant funding of \$800,000 for Colorado peace officer training for the period July 1, 2006 through June 30, 2007.

Four state-wide training partners and 10 training regions, made up primarily of judicial districts, have been established to manage peace officer training programs. The law enforcement leaders serving on each of the regional committees have identified and facilitated training programs unique to, and needed by, the law enforcement officers serving within their region.

- Of the state's 302 active law enforcement agencies, 253 have taken advantage of the training programs created by this project.
- The POST Peace Officer Training Project has provided funding allowing Colorado's peace officers to attend well over 250,000 hours of quality law enforcement training.
- POST has approved over 236 curriculums via this project.
- POST continued to partner with the Anti Defamation League to offer anti-bias training to Colorado law enforcement officers. This project provides the training at no cost to the state's law enforcement agencies. More than 10,000 Colorado peace officers have undergone the POST /ADL training and the approved agency training programs. Additionally, the anti bias training curriculum is now a required training course topic within the POST Basic Peace Officer Training and Reserve Peace Officer Training Programs.

During 2006, the Colorado Peace Officer Standards and Training Board has taken 22 revocation actions against peace officers convicted of felonies and certain misdemeanors. The certificates revoked by the Board are entered as revoked into the POST electronic database, and are also reported and entered into the *National Peace Officer Decertification Database*.

Appellate Division

The Appellate Division of the Colorado Attorney General's Office is responsible for defending the People of Colorado against appeals seeking to reverse felony convictions and sentences.

These attorneys are directly responsible for crafting many of the arguments that shape the face of Colorado's criminal laws. Although only a small percentage of appeals result in published opinions with far-reaching impacts, the Appellate Division also fights to uphold convictions in hundreds of other cases decided in unpublished opinions. In addition to these appeals, Appellate Division attorneys share their criminal law expertise with the state's district attorneys through weekly case law updates, informal advice, and formal presentations.

Caseload

The Appellate Division opened 1011 new appellate cases in 2006. Many of these cases involved convictions of more than one crime, including:

- 300 assaults against children
- 242 burglaries and thefts
- 227 kidnappings and assaults
- 214 homicides
- 190 drug felonies
- 137 aggravated robberies
- 88 sexual assaults on adults
- 185 other felonies

In 2006, Appellate Division attorneys successfully upheld criminal convictions

and/or sentences in 90 percent of their cases.

U.S. Supreme Court Rulings Impacting Appellate Work

In 2006, Appellate Division attorneys continued work to clarify the impact on Colorado state law of two significant United States Supreme Court opinions: *Blakely v. Washington* – in which the Court required a jury finding to increase a defendant's sentence beyond the statutory maximum – and *Crawford v. Washington*, in which the Court required face-to-face confrontation/cross-examination in many new situations.

BLAKELY V. WASHINGTON

Soon after *Blakely* was announced, appeals challenging the constitutionality of Colorado's sentencing scheme began flooding in to the Attorney General's Office. In the first major battle of the *Blakely* war – *Lopez v. People* (May 2005) – the Colorado Supreme Court held that *Blakely* did not render Colorado's sentencing scheme unconstitutional. Since then, Appellate attorneys have clarified the State's sentencing laws in a number of cases addressing the nuances of *Blakely*:

People v. Johnson, 142 P.3d 722 (2006) Holds that *Blakely* established a new rule of criminal procedure that does not apply retroactively. This effectively closed the

door on many challenges to sentences that were final prior to the *Blakely* ruling.

Several cases further clarified the *Blakely* ruling:

- A misdemeanor conviction counts as a “prior conviction” for purposes of sentence aggravation and is exempt from the requirements of *Blakely*.
- Habitual offender proceedings are covered under the “prior conviction” exception and do not fall under the requirements of *Blakely*.
- A statutory term of mandatory parole is not included in the calculation of whether a defendant’s sentence is “aggravated” within the meaning of *Blakely*.
- A prior juvenile adjudication falls under the “prior conviction” exception in *Blakely*.

CRAWFORD V. WASHINGTON

The United States Supreme Court held that cross-examination is necessary for any out-of-court “testimonial statement” to be admitted in a criminal trial. However, the Court deliberately declined to define “testimonial statement,” leaving lower state and federal courts to sort out the types of statements considered “testimonial.” In 2006, the Supreme Court issued opinions in two *Crawford*-related cases, *Davis v. Washington* and *Hammon v. Indiana*. Both cases dealt with whether statements made to police officers at crime scenes fell under *Crawford*’s umbrella of “testimonial statements.”

Appellate attorneys in the Attorney General’s Office have closely monitored this area of law and have taken a leading role in clarifying “testimonial” statements in Colorado:

People v. Vigil, 127 P.3d 916 (2006)
Statements made by a child victim of sexual assault are not “testimonial,” as a child in that position could not have known that his or her answers to a doctor’s questions might be used in a subsequent criminal prosecution.

Two other cases affect *Crawford* as well. The first determined that Laboratory reports regarding test results for suspected drugs are not “testimonial.” A second case declared a defendant who causes a witness against him to be unavailable at trial forfeits the right to confront and cross-examine that witness.

The nuances of these cases, along with other developments in the area of confrontation and cross-examination, will continue to keep Appellate Division attorneys busy in the coming years.

Other Significant Rulings

People v. Candelaria (Colo. 12-18-06)
Holds that convictions under multiple subsections of the first degree murder statute are not inconsistent. Therefore, a defendant can stand convicted of first degree murder under multiple theories. This can be accomplished by a single, generic conviction for first degree murder, with the jury’s specific findings to applicable theories reflected in the special interrogatories. (Appellate Divi-

sion attorneys have been arguing for this result for years. Prior to the ruling, a conviction under one theory might be reversed on appeal or in a post conviction proceeding. Where there is evidence to support multiple theories, a reversal should not undermine the entire conviction.)

People v. Alengi (Colo. 11-27-06)

This Colorado Supreme Court opinion concerned husband/wife co-defendants. It clarified the trial court's obligations when advising individuals who are having difficulty affording/obtaining counsel.

People v. Vigil, 127 P.3d 916 (Colo. 2006)

The Supreme Court reaffirmed that sexual assault on a child is a general intent crime, and that self-induced intoxication is not a defense to that crime.

People v. Pahl (Colo. App. 8-24-06)

This case clarified a variety of issues pertaining to Colorado securities law and the evidence needed to support a criminal conviction.

People v. Hoover (Colo. App. 11-16-06)

Similar to *Pahl*, this case further refined certain aspects of securities law and the Colorado Organized Crime Control Act. The Court found that a 100-year sentence was supported by the record.

People v. Manzo (Colo. App. 10-2-06)

The Court held that leaving the scene of an accident involving serious bodily injury is a strict liability offense. A driver involved in such an offense need not know the level of injury at the accident site.

Natural Resources Section

The Natural Resources and Environment Section works on behalf of Colorado citizens to protect and improve the quality of our natural environment, and to wisely use and develop our natural resources. The Attorney General's Office plays an important role in preserving Colorado's environment and restoring sites that have been injured by pollution.

The Section also provides legal counsel and representation to the Colorado Department of Natural Resources (DNR), the Colorado Department of Public Health and Environment (CDPHE), their boards and commissions, and any other state agency or official with a natural resource or environmental issue. The Section also represents the State Natural Resources Trustees to recover damages for pollution injury to resources and to restore those resources to their original state if possible.

Interstate Water

The Natural Resources and Environment Section had a number of successes in 2006 that protected Colorado's interests in its interstate rivers.

ARKANSAS RIVER

The section reached settlement with Kansas on most technical issues for determining Arkansas River Compact compliance in the future, and submitted a joint proposed decree to the Spe-

cial Master with legal briefs on the few remaining areas of dispute. The Special Master intends to file a final decree in early 2007, which will then be subject to review by the Supreme Court. Republican River

The section continues to work with the Conservation District to ensure compact compliance. Members are also defending the State's groundwater management rules against a challenge recently filed by Colorado surface water users.

SOUTH PLATTE RIVER

The section worked with Colorado water users to negotiate a cooperative agreement with Nebraska, Wyoming, and the United States for an endangered species recovery plan. The plan will allow anticipated water development in Colorado's South Platte basin to proceed without limitations based on the Endangered Species Act.

COLORADO RIVER

Section staff works closely with the Department of Natural Resources to defend and protect the State's important interests in the waters of the Colorado River. As drought reduces the availability of Colorado River water, and as water uses in the basin states and in Mexico grow, the possibility of conflict between these claims increases. Attorney General Suthers created the Defense of the Colorado River Compact to help protect

Colorado's interests in the Colorado River against such claims.

Water Rights

The Natural Resources Section includes the Water Rights Unit, which accomplished the following during 2006:

- Participated in almost one thousand water rights proceedings in Colorado's water courts, including several appeals in the Colorado Supreme Court, and numerous trials and court proceedings to enforce orders of the State Engineer.
- Protected water rights for the Division of Wildlife and the Colorado Water Conservation Board (CWCB).
- Successfully obtained decrees in a dozen Instream Flow applications for the Colorado Water Conservation Board including appropriations on South Fork Smith Fork and Smith Fork in the Gunnison basin.
- Aided the CWCB in acquiring and changing water right donations to Instream Flow use.
- Assisted the Department of Parks in acquiring new water rights and protecting existing water rights.
- Assisted the State Land Board, Colorado Department of Transportation, Department of Corrections, and the Colorado Historical Society in acquiring new water rights and protecting existing water rights.
- Obtained favorable decisions in all of Supreme Court Cases appealed during 2006.
- Advised and represented the State Engineer in litigation and negotiations concerning proper operation of Green Mountain Reservoir.
- Served as lead counsel in a six week trial that successfully defended the State Engineer's Confined Aquifer New Use Rules in the San Luis Valley from several protestors.
- Successfully resolved protests to the State Engineers Measurement Rules for Water Division No. 3.
- Assisted the State Engineer in promulgating new Measurement Rules for Water Division No. 2.
- Represented the State and Division Engineers in water court cases that could have affected Colorado's ability to comply with its obligations under its various compacts.
- 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.
- Successfully pursued numerous enforcement actions against well drillers that failed to comply with state standards, netting in nearly \$20,000 for the State.

- Successfully negotiated several large and complex augmentation plan cases in the South Platte River Basin.
- Worked on cases involving ground water extracted from coal bed methane gas wells used for beneficial purposes.
- Represented the Ground Water Commission staff in numerous proceedings regarding ground water rights in designated basins, both before the Hearing Officer and the Ground Water Commission.

FEDERAL RESERVED WATER RIGHTS

During 2006, the Natural Resources and Environment Section cooperated with the United States, the Southern Ute Indian and Ute Mountain Ute Tribes, and the Southwestern Water Conservation District to file and successfully litigate actions to conform the Tribes' water rights under a 1986 settlement to the smaller Animas-La Plata project, approved by Congress in 2000.

The section supported, with the federal government and local water users, the application for rights to underground water for the recently created Great Sand Dunes National Park and Preserve. Members also pushed for resolution of outstanding federal water right cases, some of which have been pending for over 20 years.

Oil, Gas, Minerals, and State Lands

The Natural Resources and Environment Section achieved the following in 2006 related to oil, gas, and mineral development on state lands:

- Won eviction order and appeal thereof in the Colorado Court of Appeals for the State Board of Land Commissioners against a former lessee of Lowry Range property.
- Participated in federal, state and local team meetings regarding regulation of oil shale development.
- Protected the State's interest in reclamation of mined land by representing mining agencies in a national, multi-million dollar bankruptcy involving Asarco, Inc.
- Protected the authority of the Mined Land Reclamation Board and the Division of Reclamation, Mining, and Safety regarding regulation of mining operations by filing *amicus curiae* briefs in district court and in the Colorado Court of Appeals.
- Assisted the State Board of Land Commissioners in protecting its possessory interests and water rights in trust lands it manages for the benefit of public schools. These cases including obtaining the dismissal of two administrative appeals against the Board and obtaining a quiet title decree through settlement concerning the Board's right to a mineral estate.

Air, Land, and Water

This Unit of the Natural Resources Section functions specifically to protect Colorado's natural resources. Accomplishments in 2006 include:

AIR QUALITY

- Resolved a significant air quality enforcement action against the Cemex cement manufacturing plant in Lyons. The \$1.5 million settlement constitutes the second largest settlement of its kind in Colorado.
- Assisted CDPHE in pending litigation challenging the Department's issuance of a construction permit for Xcel Energy's Comanche 3 unit in Pueblo.
- Assisted CDPHE's Air Pollution Control Division in rulemaking to impose stricter controls on oil and gas production facilities' emissions of volatile organic compounds (VOCs).
- Worked with the Air Pollution Control Division in revising the State's regulations concerning "upsets" at emission sources.
- Advised the Air Pollution Control Division on the cleanup of several Colorado sites where asbestos was disturbed in buildings during renovations.
- Worked closely with the Air Division and industry and environmental parties on proposed revisions to the State's Motor Vehicle Emissions Inspection Program.

NATURAL RESOURCE DAMAGES RESTORATION AND LAND CLEANUP

- Continued to prepare the State's claim for natural resource damages at the Rocky Mountain Arsenal. The Attorney General successfully lobbied for a \$742,000 appropriation from the General Assembly to continue litigation.
- Worked on resolution of natural resource damage claims at Rocky Flats.
- Continued efforts to resolve the state's natural resource damage claim at the California Gulch Superfund site.
- Assisted CDPHE in completing the 18-year clean-up of the Uravan uranium mill, disposing of over 12 million cubic yards of contaminated materials.

HAZARDOUS AND SOLID WASTE

- Quickly obtained a temporary restraining order allowing US Defense Logistics Agency, the EPA, and Otero County officials' access to seize and dispose of extremely hazardous chemicals accumulated by a government surplus buyer.
- Obtained a preliminary injunction to close a metals recovery facility in Montrose that had been operating in violation of hazardous waste laws.
- Provided legal counsel for enforcement of solid waste regulations that required a Frederick medical waste sterilization facility to obtain a certificate of designation for operation.

- Provided legal services to CDPHE regarding its regulatory authority to oversee disposal of avian influenza-infected livestock carcasses, and participated in an avian influenza state-federal joint task force.
 - Assisted CDPHE regarding the proper disposal of livestock carcasses in southeast Colorado as a result of the December 2006 blizzards.
 - Successfully negotiated resolution of a technical hazardous waste issue that will allow CDPHE greater regulatory oversight of wastes generated by cleanup of Lowry Landfill.
 - Worked with EPA and the Department of Justice on enforcement actions against nationally-known home builders and other large retailers for widespread, systematic stormwater permit violations at large construction sites in Colorado.
 - Obtained a penalty of \$225,000 – the largest ever awarded to CDPHE for water quality violations – against a Trinidad, Colorado man for dumping untreated sewage in and near the Purgatoire River.
 - Worked closely with CDPHE to ensure state air and water quality issues of concern were addressed with respect to oil shale research, design, and development leases.
- #### WATER QUALITY

- Represented CDPHE's Water Quality Control Division in enforcement actions against municipal utilities. The State assessed \$135,000 in penalties on these actions and required corrective action requiring nearly \$100 million dollars in facility upgrades.

State Services Section

The State Services Section of the Colorado Attorney General's Office represents the Governor, other elected state officials, the administrative parts of the judicial branch, the State Board of Education, over 20 state-supported universities, colleges, and community colleges, and the departments of Human Services, Public Health & Environment, Health Care Policy & Financing, Education, Higher Education, Labor & Employment, and Personnel & Administration.

Constitutional Cases

During 2006, the State Services unit accomplished much in defending Colorado's state government:

- Successfully defended the Governor in a lawsuit challenging whether he properly vetoed headnotes that either contained substantive legislation or violated the separation of powers doctrine.
- Successfully defended a constitutional challenge to a law prohibiting parolees from voting or registering to vote.
- Successfully defended the Secretary of State's decision to allow electronic voting machines at the November 2006 general election.
- Defended the Department of Public Health in two separate lawsuits challenging the constitutionality of the Colorado Clean Indoor Air Act.
- Successfully defended the Colorado Commission on Higher Education in *Colorado Christian University v. Weaver*. The case challenged the constitutionality of a prohibition on state-funded finances to pervasively sectarian universities.
- Obtained dismissal of all claims in a major constitutional challenge to Colorado's system of financing K-12 education.
- Successfully defended the Charter School Institute, the State Board of Education, and the State of Colorado a case brought by school districts, parents, and taxpayers challenging the Charter School Institute's constitutionality.

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 73 child entities seeking fines for violations of licensing statutes and regulations, collecting more than \$14,800.

- Represented DHS in an additional 63 cases, including 13 summary suspensions against child-care providers that failed to comply with regulation or operated without a license.

- Represented DHS in approximately 805 child protection cases, resolving most through mediation.
- Handled 17 cases for the Division of Youth Corrections regarding appropriate levels of detention or the release of juveniles.
- Recovered more than \$885,000 in Medicaid payments from personal injury settlements and from other liable third parties.
- Successfully concluded a 21-year old class action suit challenging the adequacy of mental health services provided to Denver residents.
- Continued defense of DHS and the Department of Health Care Policy and Financing in a lawsuit over the Departments' computer system that determines eligibility for public assistance benefits. Also reached agreement with plaintiffs on an issue which paved the way for departments to recovery certain overpayments.



Education

Over the course of 2006, the State Services section:

- Continued representing the Charter School Institute. Section members reviewed new applications and monitored seven operating Institute charter schools serving over 2,500 students.
- On behalf of the State Board of Education, successfully prosecuted disciplinary actions against 44 educator/teacher license holders and applicants, including 18 sex offenders.
- On behalf of the Auraria Higher Education Center, revised and updated the campus governance documents, including the bylaws of the Auraria Board and the memorandum of agreement among the three Auraria institutions of higher education.
- Advised the State Board of Education in connection with 15 charter school appeals and seven applications for exclusive chartering authority.
- On behalf of Colorado School of Mines, received a favorable ruling on a tax assessment by the City of Golden resulting in the withdrawal of an assessment of approximately \$300,000.
- Worked with the Adams State College Board of Trustees to adopt a Board policy manual and advised on legal procedures to hire a new College president.

Workers' Compensation

The State Services section opened 96 cases to force employer compliance with mandatory workers' compensation insurance statutes. Section members closed 41 cases, either by the employer's fine payment, settlement, by sending the fine to collection, or by the employer obtaining insurance or closing the business (under the previous statute). The section obtained 54 district court judgments for fines ordered by the Division of Workers' Compensation, and sent 28 judgments to Central Collection Services.

Other Legal Services

Attorneys and staff in the State Services section:

- Prosecuted Federal False Claims Act litigation against a long-term healthcare facility, resulting in settlement recovery of over \$850,000 for the State.
- Provided legal guidance to the Public Utilities Commission on gas, electric, telephone, and transportation matters, including major rate cases.
- Provided legal assistance to the Governor's Expert Emergency Epidemic Response Committee, the Governor, and CDPHE regarding the use of emergency public health powers in the event of a bio-terrorist attack or pandemic.

Civil Litigation and Employment Law Section

The Civil Litigation and Employment Law section defends state employees and state agencies in state and federal courts. The section handled 691 new cases in 2006, as well as approximately 397 personnel administrative cases. These cases involved individuals suing for personal injury, property damage, or employment discrimination, or claims that a person's constitutional rights were violated by state action.

The section also represents state agencies in personnel matters before the State Personnel Board. Section attorneys 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 thereof. Section attorneys provide advice and training to all state agencies in personnel administration and employment issues.

Tort Litigation

The Tort Litigation Unit defended the State in 81 new lawsuits alleging personal and property damage, as well as federal civil rights claims including five cases to monitor requests for attorneys' fees and costs. The unit also continued to handle many previously opened cases. Unit attorneys also advise the Division of Risk Management regarding myriad issues. Notably, the Tort section wrote

an *amicus curiae* brief in a case involving wrongful death damages for the Colorado Supreme Court.

Additionally, members of the unit made proactive presentations to several state agencies regarding the lawsuit process, governmental immunity, and the appropriate actions to take if sued.

Tort Litigation Unit in 2006 by the numbers:

- 88 – Winning percentage of motions to dismiss tort cases (33–4)
- 10 – Cases won on appeal. These decisions generally upheld lower court rulings in favor of the State defendants
- 26 – Tort cases settled favorably for the State
- 12 – Convinced plaintiff's attorneys in cases to dismiss voluntarily under the Colorado Governmental Immunity Act
- 9 – Cases dismissed by courts for failure to comply with procedures, failure to prosecute, or other reasons
- 2 – Victorious motions for summary judgment
- 2 – Successfully opposed petitions for Certiorari filed in the United States Supreme Court
- 10,305 – Dollars won for the State in attorneys' fees during two cases
- 9 – Cases resolved by the Tort Litigation Unit without the paying any attorneys' fees or costs

8,073,215 – dollars saved for the State of Colorado through successful defense of claims cumulatively seeking \$9,342,669 in damages (including \$5 million sought by elk ranchers whose elk herds were culled due to Chronic Wasting Disease). The section saved \$6,715,000 by winning motions to dismiss and summary judgment, and \$1.4 million through settlements.

EMPLOYMENT TORT LITIGATION

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

Among the accomplishments of the Employment Tort Unit in 2006:

- The unit defended 44 employment cases filed in state and federal district courts, including 14 new cases, and monitored ten employment cases defended by outside counsel. These 54 cases involved more than 450 separate claims for relief, including approximately 180 personal claims against state supervisors and managers.
- Five new appellate cases were filed in the Colorado Court of Appeals and the Tenth Circuit Court of Appeals. Included in these cases is one multi-plaintiff

lawsuit arising from the Department of Corrections' layoffs in the summer of 2003 due to budget constraints.

- Attorneys aggressively sought and obtained dismissal and summary judgment, saving the State over \$1.5 million in damages. The unit obtained full dismissal of all claims addressed in five of the seven motions to dismiss decided during 2006 (and partial dismissal in the other two motions decided). This included the dismissal of all claims asserted in two cases related to the 2003 DOC layoffs. These dismissals were obtained at the outset of the litigation, prior to litigation which would have taken extensive time and monetary investment.
- The employment tort unit aggressively defended all cases, resulting in favorable settlements for the State. Fourteen cases were settled for a total of \$1,242,000, saving the State more than \$4.3 million.

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 these cases if appealed to the Colorado Court of Appeals. The section provides general advice and training to state agencies and employees regarding personnel matters.

Work by the Personnel and Employment Law Section in 2006 included:

- Providing employment advice and consultation concerning hiring, discharging, and disciplining employees.
- Coordinating and presented statewide and agency-specific training seminars for State officials and managers.
- Defending 397 cases before the State Personnel Board and the Colorado Court of Appeals.
- Winning more than half of Court of Appeals decisions involving appeals by current and former state employees against their employing agencies.
- Representing State agencies in 26 hearings before the State Personnel Board. The Board's Administrative Law Judge upheld the State's action without modification in 19 of those cases, and allowed the State to take a modified action in two others.
- Successfully arguing for denial of a discretionary hearing in 55 of 63 petitions filed with the State Personnel Board by state employees. In the remaining eight cases, the State won three at hearing and obtained a favorable settlement or dismissal in two others. The remaining three cases are pending.
- Representing State agencies in six appeals to decisions by the Administrative Law Judge, and obtaining Board affirmation of the State agency's action in two of those appeals.

Of the remaining cases handled in 2006 by the Personnel and Employment Law Section, 56 cases were settled, 34 were resolved in the State's favor on dispositive motions, and the remainder is awaiting hearing, decision, or investigative reports by other State agencies.

Transportation Unit

The attorneys in the Transportation Unit provide general legal advice to the Colorado Department of Transportation and represent CDOT in a variety of cases. These often include eminent domain cases as well as other types of land use cases such as billboard disputes, inverse condemnation, and access issues. Unit attorneys are becoming increasingly involved in construction contract disputes, and one attorney reviews all CDOT contracts and revises them as needed. The members of the unit also advise the Transportation Commission and the Colorado Tolling Enterprise Board. CDOT attorneys accomplished the following in 2006:

- Represented CDOT in 47 new condemnation, access, relocation, billboard, inverse condemnation, eviction, and other cases. In addition to those 47, many others are still pending.
- Settled or resolved through trial 13 condemnation cases in fiscal year 2005-06, saving the state in excess of \$1,248,000.
- Reviewed 338 contracts for CDOT with an average turnaround time of approximately 3.5 days – much quicker than

the general turnaround time for attorney review of state contracts.

- Continued to obtain generally favorable rulings in several trials concerning land and billboard valuations.
- Advised CDOT regarding Environmental Impact Statements for several highway corridors. Each of the Statements involved projects that are generating controversy among local governments and citizens, including the Northwest Corridor, I-70 Mountain Corridor, I-70 East to DIA, and US 36.

Corrections Unit

The Corrections Unit defended the State of Colorado in 466 new inmate lawsuits during 2006. These suits involved issues including prisoner constitutional rights, time computation, prison discipline proceedings, habeas corpus petitions, religious issues, parole issues, and contract issues. In addition, unit lawyers handled approximately 1300 claims filed by possible plaintiffs in a class action lawsuit regarding the Americans with Disabilities Act.

The Corrections Unit also provides general legal advice to the Department of Corrections and Parole Board on a daily basis. These matters include open records requests, environmental issues, sentencing issues, internal discipline and procedural matters, and administrative regulations. In 2006, sixty files were opened for specific legal advice.

Subsequent Injury Fund (SIF) and Civil Rights Unit

The attorneys in this unit provide legal advice to the Colorado Civil Rights Division within the Department of Regulatory Agencies. Unit members assist CCRD's investigations of charges of employment, housing, and public accommodations discrimination. The unit also prosecutes cases that have been noticed for hearing by the Colorado Civil Rights Division. Attorneys and staff additionally defend the SIF and the Major Medical Insurance Fund – parts of the Special Funds Unit within the Department of Labor and Employment – against claims by employees injured in the course and scope of employment. During 2006, the unit handled twenty open cases and twenty-five new Civil Rights cases.

Business and Licensing Section

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, the 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.

Professional Unit

The Professional Unit of the Business and Licensing Section provides representation to a wide variety of boards, commissions, offices and advisory committees contained within the Department of Regulatory Agencies. The Professional Unit supports each represented entity in fulfilling its statutory mandate to protect the public interest through litigation and resolution of licensure matters, disciplinary actions, cease and desist orders, and injunctive actions, as well as providing advice and guidance with regard to rulemaking and policy issues. Examples of the work performed by the Professional Unit are described below.

BOARD OF DENTAL EXAMINERS

During 2006, counsel represented the Board of Dental Examiners in various disciplinary matters, including revocation/suspension of licensure, probation with practice monitors, continuing education, and Letters of Admonition for substandard practice. In total, counsel resolved 37 matters on behalf of the Board.

STATE BOARD OF ACCOUNTANCY

During the past year, counsel for the State Board of Accountancy resolved 20 cases referred to the Office of the Attorney General, including nine cases involving felony convictions, six of which resulted in relinquishment. One case involved the chief financial officer for Qwest who was indicted for insider trading for using non-public information to sell stocks during the reign of Joseph Nacchio. She pled guilty to one felony count of insider trading and was sentenced to probation for two years, six months of home detention, and payment of a \$250,000 fine and \$125,000 in restitution. This CPA voluntarily relinquished her certificate to practice.

BOARD OF CHIROPRACTIC EXAMINERS

Counsel for the Chiropractic Examiners Board resolved seventeen cases during the last year, including a summary suspension and several matters involving substandard care.

STATE ELECTRICAL BOARD

Counsel for the State Electrical Board filed formal charges against 10 licensees, 8 of which are still in various stages of litigation. Counsel has represented the Board in an increasing number of cases involving unlicensed practice and apprentices practicing unsupervised or outside the scope of their employment.

BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

On July 1, 2006, in conjunction with the termination of the Board of Examiners of Architects, the Board of Licensure for Professional Engineers and Professional Land Surveyors was dissolved and reconstituted to include the regulation of the practice of architecture; the Board was renamed the Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors. Counsel for

the Board of Licensure for Professional Engineers and Professional Land Surveyors successfully resolved 18 disciplinary matters during the previous year.

MENTAL HEALTH LICENSING SECTION

Counsel for the Mental Health Licensing Section represent five separate boards and one program that each regulate a mental health profession including licensed professional counselors, marriage and family therapists, psychologists, social workers, unlicensed psychotherapists, and certified addictions counselors. Counsel provides representation in various disciplinary matters, including cease and desist orders, summary suspensions, revocation, probation and license denials, as well as serving as general counsel.

Among the programs the Mental Health Licensing Section worked with in 2006 are the Certified Addiction Counselor Program, the Grievance Board (Unli-

censed Psychotherapists), the Board of Licensed Marriage and Family Therapist Examiners, the Board of Licensed Professional Counselor Examiners, the Board of Psychologist Examiners, and the Board of Social Worker Examiners .

BOARD OF OPTOMETRIC EXAMINERS

During 2006, counsel for the Board of Optometric Examiners represented its interests in a wide variety of disciplinary actions, including enjoining a defendant who was practicing



Members of the Business and Licensing division discuss office strategies

optometry without a license; negotiating probation and practice monitoring for an optometrist who prescribed a schedule II controlled substance; and negotiating an appeal of a letter of admonition issued by the Board to an optometrist who practiced optometry with an unlicensed person under an agreement that provided for fee splitting.

STATE PERSONNEL BOARD

Counsel for the State Personnel Board filed four appellate briefs this year. Unlike most other boards, the Personnel Board's cases are at the appellate level and counsel typically monitors cases for issues of general impact on jurisdiction or statutory authority.

REAL ESTATE DIVISION

Counsel for the Real Estate Division represents the Board of Real Estate Appraisers and the Real Estate Commission in a wide variety of disciplinary matters. Counsel for the Board of Real Estate Appraisers successfully resolved 15 cases this past year, many of the cases involving formal litigation. Counsel represented the Real Estate Commission in 72 separate matters, resolving 39.

BOARD OF VETERINARY MEDICINE

Counsel for the Board of Veterinary Medicine successfully resolved 15 cases this year, including negotiating stipulations on behalf of the Board in four matters involving veterinarians who had substance abuse violations. Counsel also negoti-

ated a stipulation on behalf of the Board to include probation and practice monitoring for a veterinarian who performed surgery on an animal when that surgery was not the best course of action and resulted in further complications.

Revenue Unit

The Revenue team attorneys represent all of the Revenue tax client groups, the Colorado Gaming Commission, the Dealer Board, the Racing Commission, the Boxing Commission [a DORA client], the liquor licensing authority, the Motor Vehicle Division and the Property Tax Administrator [a Local Affairs client]. This team does administrative hearings before the boards and commissions, and trial and appellate work in state and federal courts. The following describes the team's work in 2006.

REPRESENTING BOARDS

This team represents the Colorado Limited Gaming Control Commission, the Motor Vehicle Dealer Board, the Boxing Commission and the Colorado Racing Commission. Each regularly assigned lawyer presents cases for the staff before his/her assigned board or commission and then represents the board or commission on judicial review or appeal of its decisions to the Court of Appeals. Each assigned attorney also helps draft board or commission rules and provides legal advice on questions of law and policy decisions not connected with a specific case pending before the board or commission.

MOTOR VEHICLE DIVISION

All of the team lawyers handle legal matters for the Motor Vehicle Division as assigned. Most of the work involves rule making, driver appeals, records requests and, recently, the identification law suit, *Hill, et al v. M. Michael Cooke and the Colorado Department of Revenue* (a lawsuit seeking ID cards and drivers' licenses for new Colorado applicants without the need to present secure and verifiable documents).

Medical Unit

The Business and Licensing Section's Medical Unit provides legal guidance and representation to the state boards that regulate physicians, physician assistants, emergency medical technicians, nurses, certified nurse aides, psychiatric technicians, pharmacists, and podiatrists. The Medical Unit's attorneys and legal assistants enable the boards to fulfill their mission of public protection by implementing, enforcing, and defending regulatory actions. The Unit's attorneys also advise board members and staff to assure compliance with the law, respect for individuals' due process rights, and analysis of effective and efficient legal options.

BOARD OF NURSING

Unit attorneys provided both general counsel and litigation services to the Board of Nursing and Nurse Aide Advisory Committee ("BON"). The Unit resolved approximately 100 cases for BON this

year. Unit attorneys engaged in litigation in several cases, and also reduced a backlog of cases. In 2005, BON cases remained in the Office of the Attorney General from referral to closing for an average of 322 days. That number was reduced to 250 days in 2006. While assuming these litigation and case resolution responsibilities, Unit attorneys also assisted staff and BON members with significant review and revision of BON policies and procedures, and with revising rules to better reflect the needs of the nursing profession.

BOARD OF MEDICAL EXAMINERS

Over the course of the calendar year, the Unit's attorneys provided general counsel and litigation services to the Board of Medical Examiners ("BME"). Cases included disciplinary actions against licensed physicians (and a few licensed physician assistants), agreements with applicants for licensure, actions to sustain BME decisions to deny applications for licensure, and injunctions against unlicensed individuals unlawfully engaged in the practice of medicine.

Financial Unit

The Financial Unit provides legal services to a number of Boards and Commissions, each of which involves a specialized and distinct practice area. Details concerning the subject matter of such advice and representation the Unit provides to these agencies, as well as some specific examples, are provided below.

DIVISION OF INSURANCE

The Unit provides general counsel advice to the Insurance Commissioner and represents the Commissioner and/or the Division in licensing and litigation matters. The Unit received approximately 68 referrals during the year which included requests for informal attorney general opinions, district court litigation matters, and licensing matters concerning insurance producers. Of the licensing matters, 27 were bail bond insurance producer cases.

DIVISION OF SECURITIES

The Unit provides general counsel advice to the Securities Commissioner and represents the Commissioner and/or the Division in enforcement actions brought in the Denver District Court and in licensing actions against securities sales representatives, securities broker-dealers and securities investment advisers. Unit attorneys represented the Division of Securities in more than 12 complex securities matters including more than 5 licensing matters.

DIVISION OF BANKING

Unit attorneys provide general counsel advice to the Banking Commissioner and represent the Commissioner and the Division in licensing and litigation matters. During 2006, the Unit: represented the Division in negotiations with American International Depository and Trust, and filed a Notice of Charges for alleged violations of the Stipulation by AIDT; represented the Division in resisting a subpoena served upon the Division in

the Alpine Bank matter by filing a Motion to Quash Subpoena in the U.S. District Court in Colorado; represented the Division in obtaining judgment on Rule 106 claims against the Division and the Banking Board, and the voluntary dismissal of all other claims against the Division in a lawsuit brought by Commerce Bank which alleged various violations relating to the granting of a state bank charter to Fort Collins Commerce Bank.

DIVISION OF FINANCIAL SERVICES

Unit attorneys provide general counsel advice to the Financial Services Commissioner and represent the Commissioner and the Division in licensing and litigation matters. Examples of such matters included: representing the Division in the contested liquidation of a Colorado credit union; representing the Division by preparing legal documents placing New Horizons Credit Union into receivership.

DEPARTMENT OF AGRICULTURE

The Unit acts as general and litigation counsel to the various divisions of the Department of Agriculture. As part of its service, Unit attorneys consult on an ongoing basis to determine the best legal strategy to accomplish the Department's objectives with respect to a wide variety of subject areas including rulemaking, chronic wasting disease, Pet Animal Care Facilities Act enforcement matters, firearms policy, emergency preparedness, avian influenza, zoning, animal cruelty, animal identification, homeland security, regulation of the sale and use of pesticides, regulation of seed and nursery stock, promotion and marketing of ag-

ricultural products, control of noxious weeds, certification of organic producers, regulation of farm products dealers and commodity handlers, inspection of all commercially used weights and measures in the state, administration of the livestock brand recording system, and administration of the State Fair and its associated activities.

COLORADO STATE FAIR

Unit attorneys provide general representation of the State Fair including advising on legal issues. Examples of such matters include the hiring of a new carnival provider 30 days prior to the opening of the fair and negotiating a new management agreement for the events center.

MINED LAND RECLAMATION BOARD

Unit attorneys represented the MLRB in 12 administrative hearings and drafted approximately 98 orders concerning matters considered by the Board at those hearings. Unit attorneys also represented the MLRB in assessing the regulatory impact of oil shale exploration and drilling in Colorado. Unit attorneys met with representatives of federal agencies, other state agencies and local entities to determine permit requirements for companies intending to implement experimental oil shale technology.

Public Utilities Commission

The Public Utilities Commission ("PUC") regulates the rates, charges, services, and facilities of public utilities within Colorado. The Public Utilities Litiga-

tion Unit of the Attorney General's Office represents the litigation staff of the Public Utilities Commission. The unit appears in litigated matters on behalf of the public interest to achieve fair utility rates for all types of customers. The unit works to ensure that adequate and reliable gas, electric, telephone, water, and motor carrier utility service is provided to all Coloradans.

In 2006, the PUC Litigation Unit:

- Handled 80 administrative cases before the PUC on behalf of staff in matters concerning natural gas, electric, telecommunications, and water utilities.
- Handled ten court and judicial review cases representing the Public Utilities Commission and the commissioners thereof.
- Handled 25 enforcement proceedings on behalf of staff against motor carriers, including taxis, luxury limousines, airport shuttle vans, and household good movers.
- Handled four matters concerning railroad crossings.

Examples of the Litigation Unit's work to represent Commission staff includes:

- Public Service Company of Colorado's 2006 Phase I electric rate case.
- Public Service's electric quality of service plan for 2007 through 2010.
- Public Service's application to upgrade portions of existing transmission lines

that run from midway between Colorado Springs and Denver to south of Highlands Ranch, as well as construct new transmission lines from Pueblo to north of Colorado Springs.

- Public Service's application to implement an interim Renewable Energy Standard Adjustment for Public Service's 2007 compliance with Amendment 37.
- Public Service's application for approval of its 2007 Renewable Energy Standard Compliance Plan.
- Public Service's application for approval of a third party contract to purchase solar energy generated by the third party's construction of a solar photovoltaic generating plant.
- Colorado Natural Gas' 2006 natural gas rate case.
- Various applications to establish water utilities in Durango, Dallas Creek and Elbert County.
- Judicial review in the District Court for Morgan County, and then before the Colorado Supreme Court regarding the City of Fort Morgan's successful attempt to obtain a reversal of the PUC decision awarding a certificate of public convenience and necessity to K N Wattemberg Transmission, LLC, to provide natural gas service to two industrial customers located within municipal boundaries.
- Colorado Supreme Court Rule 21 proceeding concerning whether memoranda prepared by the PUC's advisory staff should be included in the record certified to courts on judicial review.
- United States Court of Appeals for the Tenth Circuit and the United States District Court for the District of Colorado in a case involving federally certificated motor vehicle carriers.

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