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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 the 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 recover natural resource damages at 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 32 years and have two daughters, Alison, a lawyer in Denver, and Kate, an officer in the United States Navy.

## Daniel D. 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, Mr. 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, Mr. 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.

Mr. 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.



## 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, Mrs. 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.

Mrs. 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.

## Geoffrey Blue

Deputy Attorney General for Legal Policy and Governmental Affairs

Geoff Blue joined the Attorney General's Office in early 2008 as senior policy advisor to the Attorney General and office liaison to the Governor, General Assembly, and local governments.

Prior to joining the office, Mr. Blue practiced with Fairfield and Woods, P.C., as a general commercial litigator. His legal experience includes stints with Higgins, Hopkins, McLain & Roswell, LLC, Wheeler Trigg & Kennedy, P.C., and Wolf, Block, Schorr & Solis-Choen LLP out of Philadelphia, Pennsylvania.

Mr. Blue received his bachelor of arts degree in politics from Princeton University. From there, Mr. Blue matriculated to Victoria University of Manchester, England, where he earned a master of arts in health care ethics. Finally, Mr. Blue was granted a JD from Georgetown University Law Center in 1998. During law school, he served as president of the Society of Law, Health, and Bioethics.



# The Colorado Department of Law

## Colorado Department of Law by the Numbers

<i>Total Appropriation</i>	<i>\$46,269,779</i>
<i>Percent of Statewide Total Appropriation</i>	<i>0.3%</i>
<i>Total Full Time Employees</i>	<i>383.5</i>



## 2007 Legislative Initiatives

Bill		Passed House	Passed Senate
SB 85	Criminalizing mortgage appraisal fraud	58-6	31-3
HB 1326	Creating a sex offender email registry	59-6	33-1
HB 1208	Allowing discount gasoline programs	60-4	27-7
SB 96	Stiffer penalties for theft from at-risk individuals	60-4	30-2
SB 110	Funding the Rocky Mountain Arsenal litigation	62-0	34-0
	Total Votes:	299-20	155-13

Attorney General Suthers' legislative agenda for 2007 passed with 454 aggregate "yes" votes against only 33 "no" votes. All bills were signed into law by the Governor.

# Consumer Protection Section

The Colorado Attorney General's Office protects Colorado consumers and businesses against fraud and maintains a competitive business environment by: enforcing state and federal consumer protection laws; enforcing state and federal antitrust laws; implementing and enforcing provisions of the tobacco master settlement agreements; enforcing state laws on consumer lending, predatory lending, debt collection, rent-to-own, and credit repair; and advocating on behalf of residential, small business, and agricultural public utility ratepayers.

## Consumer Fraud, Antitrust, & Tobacco Settlement Enforcement

The Consumer Fraud and the Consumer Protection, Antitrust & Tobacco Units enforce a variety of state and federal consumer protection and antitrust statutes, as well as the terms of the Tobacco Master Settlement Agreement and related statutes. In order to maximize limited resources, the units also engage in significant consumer education and outreach efforts.

The Attorney General created a mortgage and foreclosure fraud team dedicated to enforcing new mortgage and foreclosure fraud laws enacted over the last two years. This new enforcement team has already undertaken the following activities:

- Worked on cleaning up print advertisements that failed to comply with federal

truth-in-lending laws or contained deceptive or misleading terms about the availability of low-cost mortgage loans. Many of these advertisements pushed loans with low "teaser" rates or misrepresented other material terms. Numerous ongoing investigations are expected to be completed by early 2008.

- Conducted investigations of eleven mortgage brokers or foreclosure relief firms in 2007. The Attorney General also worked closely with the Mortgage Broker Licensing Program at the Division of Real Estate to identify fraudulent mortgage brokers and appraisers.
- Worked on various local partnerships to support education and outreach to affected homeowners through the Foreclosure Hotline and in a national Foreclosure Prevention Working Group, which is a multistate group of eleven state Attorney General offices and two state banking departments. In 2007, the Foreclosure Prevention Working Group met with the top twenty subprime loan servicers in Chicago to explore ways to provide immediate relief to homeowners facing foreclosure.

The Attorney General has also continued to make healthcare and charitable fraud high priorities for consumer protection by taking the following actions in 2007:

- Reached a \$5.5 million settlement with Warner Chilcott Corp. in Colorado's antitrust lawsuit concerning the company's agreement with Barr Laboratories that



prevented generic versions of Ovcon, a prescription oral contraceptive, from reaching the marketplace.

- Entered into Assurances of Discontinuance with two discount health plans, Design Savers Plan and International Association of Benefits. Under these settlements, the companies agreed to advertising restrictions. IAB also paid \$31,000 under the assurance and DSP paid \$28,713.

The Attorney General continued to combat and remedy consumer fraud in 2007 by taking action against the following individuals and businesses:

- Distributed \$4.0 million in restitution to 1,500 individuals, churches, and businesses nationwide pursuant to the settlement of a consumer fraud lawsuit against General Steel.
- Reached an Assurance of Discontinuance with Uzed.com, providing full refunds for consumers who sold Uzed.com their CDs but never received payment.
- In September 2007, filed suit and obtained a preliminary injunction against American Engine Installation and its owners. The lawsuit alleged that the engine repair shop lured consumers to AEI with artificially low estimates. The preliminary injunction imposed numerous changes to the advertising and sales practices of this company, including preventing the estimates without inspection of the vehicle.
- In November 2007, filed suit and obtained a preliminary injunction against a Michigan company whose solicitations to sell certain workplace posters

resembled official state notices. The injunction enjoined the company from a number of practices that created the appearance of an official governmental mailing.

- In December 2007, filed against Thermal Advantage and its owner alleging consumer protection violations in connection with their advertising of a “test program”. The complaint also alleged a violation of a 2006 Assurance of Discontinuance that the Attorney General reached with Thermal Advantage regarding its advertising practices.

The Attorney General also continued to work closely with AARP ElderWatch, a program started in 2001 with the AARP Foundation, on education and outreach efforts directed at older Coloradoans. Among other activities, document shredding and identity theft prevention events were held in Denver, Fort Collins, Grand Junction, and Pueblo.



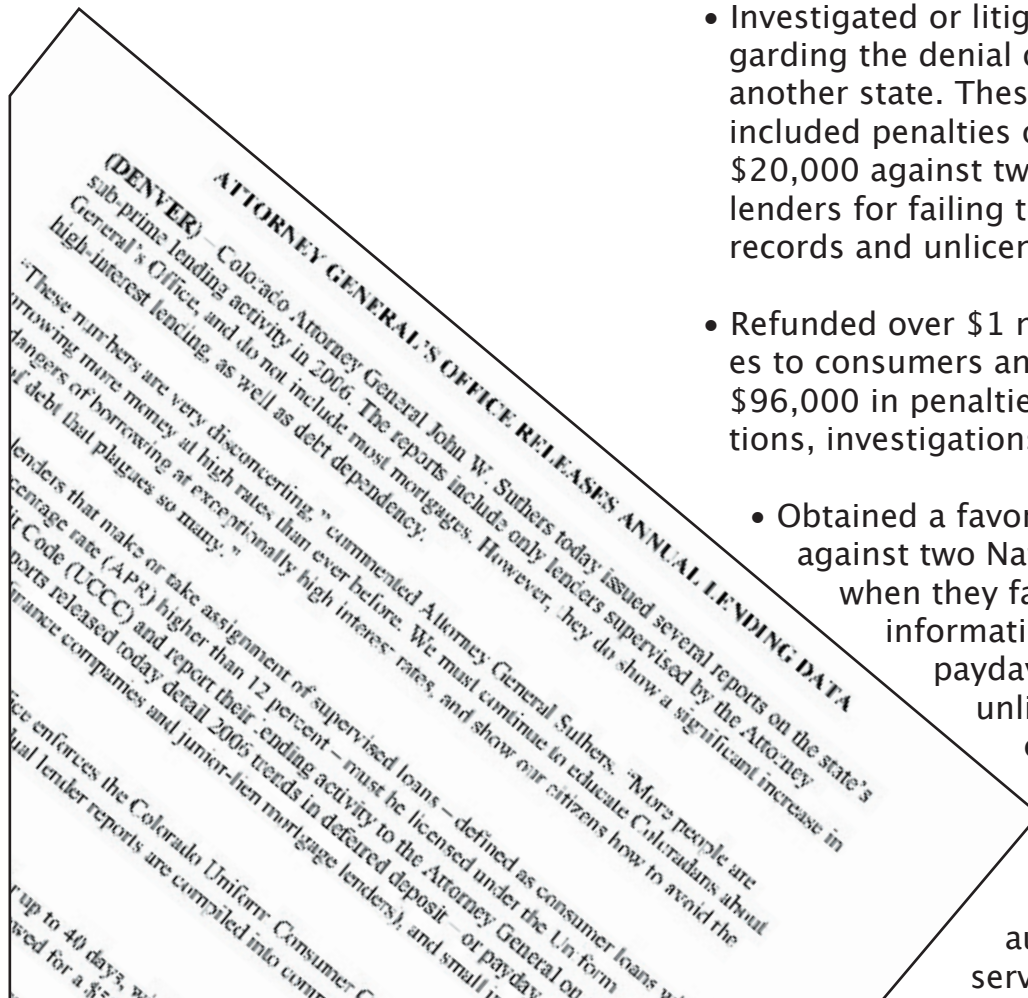
The Attorney General participated in a document shredding event, sponsored by AARP ElderWatch, in Grand Junction.

## Uniform Consumer Credit Code & Collection Agency Board

The Consumer Credit Unit enforces six state credit-related laws – the Uniform Consumer Credit Code (consumer finance), including the Consumer Equity Protection Act (predatory lending) and the Deferred Deposit Loan Act (payday loans); the Fair Debt Collection Practices Act (collections); the Credit Services Organization Act (credit repair); and the Rental Purchase Agreement Act (rent-to-own).

## LENDING PRACTICES

- Supervised 1,876 licensed lenders consisting of mortgage companies, payday lenders, finance companies, and small installment lenders. Enforced credit laws against 2,344 other creditors.
- Conducted 1,000 compliance examinations of licensed lenders and required each to take corrective action and refund overcharges as appropriate.
- Investigated 386 written consumer complaints against licensed lenders and other creditors.
- Investigated or litigated 41 cases regarding the denial of a license in another state. These investigations included penalties of \$36,000 and \$20,000 against two separate payday lenders for failing to maintain required records and unlicensed lending.
- Refunded over \$1 million in overcharges to consumers and collected over \$96,000 in penalties from examinations, investigations, and cases.
- Obtained a favorable court order against two Native American tribes when they failed to produce information about Internet payday loans involving unlicensed lenders and excessive finance charges.
- Filed a lawsuit against a subprime automobile loan servicing company and





its officers for alleged excessive fees, failure to file required notification with the state, and improper collections and repossessions.

- Objected to a credit repair company's attempt to discharge in bankruptcy a 2003 judgment in favor of the state and consumers for over \$1 million.
- Adopted rules on payday loan extended payment plans to implement House Bill 07-1261, set rules on license and notification fees, and revised record retention rules for payday and small installment loans.

#### DEBT COLLECTION

- Oversaw the activities of 647 licensed collection agencies.
- Investigated or litigated 79 cases and collected \$124,250 in fines.
- Handled 859 written complaints against collection agencies in addition to telephone complaints and inquiries.
- Issued 62 cease and desist advisory notices to unlicensed collection agencies.
- Settled a case with a collection agency over failure to cease communications after written requests to stop contact. The agency's license was suspended for 20 days and it paid \$65,000 in fines and consumer education funds.
- Settled a case with a collection agency that failed to remit funds owed to its clients. The agency's license was revoked and its surety bond was assigned to a court-appointed receiver.
- Coordinated a multi-state investigation into a law firm that threatened legal action on old debts beyond the statute of limitations and misrepresented that civil penalties were due without court judgments.
- Provided data and recommendations to the Department of Regulatory Agencies for its 2007 sunset review of collection agencies.



Attorney General Suthers visits with members of the Milliken Town Council. The Attorney General visited the small community of 2,900, as well as nearby Johnstown, to talk with local citizens about identity theft and consumer fraud.

## Office of Consumer Counsel

The OCC Unit provides legal support and represents the Office of Consumer Counsel. The OCC advocates on behalf of residential, small business, and agricultural interests before the Public Utilities Commission and in other forums on issues concerning electricity, natural gas, and telephony. Highlights from 2007 include:

- Appeared or worked on behalf of the OCC in 81 matters before the PUC, including protests, interventions, and rulemaking activities. In fiscal year 2007, the OCC saved consumers approximately \$73,150,000.
- In September 2007, Public Service filed an application seeking authority to recover on-going costs associated with the incremental transmission investment it has made since the company's last Phase I electric rate case. In December 2007, the commission issued its order modifying Public Service's application as requested by the OCC. Public Service has appealed this decision and the final decision is still pending.
- In November 2007, Public Service filed its 2007 Colorado Resource Plan that identified future electric generating needs through 2015. Public Service requested that the commission waive its competitive procurement rules to approve the company's proposal to replace four coal units with a new 480 mW natural gas combined cycle. The OCC intervened in this docket and will be an active participant.
- In December 2006, Public Service filed a natural gas rate case seeking to increase base rate revenues by approximately \$41 million, an increase of 13.9 percent. In May 2007, Public Service, the OCC, and staff filed a Settlement Agreement which would increase base rate revenues by approximately \$32 million. The commission approved the Settlement Agreement.

# Criminal Justice Section

The Criminal Justice Division of the Colorado Attorney General's Office 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. Division members provide special assistance to district attorneys in death penalty and gang activity cases, as well as administer the Peace Office Standards and Training Board.

The Criminal Justice Division coordinates the prosecution of foreign fugitives and represents the Department of Public Safety. The Division has statutory authority to prosecute white-collar crimes, environmental crimes, and multi-jurisdictional matters either through direct filings or use of the Statewide Grand Jury.

## Securities Fraud

Pursuant to Colorado statute, the Attorney General has original jurisdiction to prosecute criminal violations relating to securities and securities fraud. The Attorney General's Office independently investigates and prosecutes allegations of securities violations statewide, and in doing so, works closely with the Colorado Division of Securities and other law enforcement agencies. The unit consists of two attorneys, two investigators and a paralegal who work on securities fraud cases full-time. In 2007, the unit opened

seventeen investigations and filed ten felony criminal cases throughout the state. Of the cases opened, thirteen were initiated by the Attorney General's unit, and four cases were referred by the Colorado Division of Securities. The unit gained six felony convictions during 2007, which resulted in restitution orders for Colorado victims totaling in excess of \$5.2 million.

## Insurance Fraud

Under Colorado law, the Attorney General has original jurisdiction to prosecute allegations of criminal conduct relating to insurance fraud. The Insurance Fraud Unit consists of two attorneys, four investigators and a paralegal assigned full-time to insurance fraud matters. During 2007, the Insurance Fraud Unit received 272 referrals of potential criminal cases relating to insurance fraud. As a result, the unit opened 64 new felony investigations--nearly twice as many investigations as in 2006. In December of 2007, the unit went to trial by jury in Larimer County against Robert Ovigian on charges related to auto theft and insurance fraud. The trial resulted in nine felony convictions. In addition to the Ovigian case, fourteen additional insurance fraud cases were resolved with convictions by plea agreements. In 2007, the unit filed 22 new cases in Colorado courts. Additionally, the unit achieved new restitution orders totaling more than \$336,000.

## Medicaid Fraud

In 2007, Colorado paid approximately \$3.2 billion on behalf of 393,200 citizens who qualified for Medicaid benefits. The goal of the Medicaid Fraud Control Unit is to preserve this fund for those in need and to protect it against fraud. The unit also investigates and prosecutes complaints of neglect and physical abuse in long-term care facilities such as nursing homes, and serves as an authority and training resource in abuse investigation and prevention. Two attorneys, seven investigators, an auditor, a paralegal, and a program assistant accomplished the unit's work in 2007.

In 2007, the unit opened 52 new investigations and filed four new cases of fraud, including impersonation, forgery, and durable medical equipment fraud. Seven criminal convictions and several civil settlements were obtained, with recoveries totaling almost \$2 million. Sample convictions included: Three members of an organization that billed the state for over \$1 million in false and inflated wheelchair repair claims; a defendant who worked as a nursing assistant under a falsified license; and an individual who created a fictitious employee of a home care company and then cashed the employee's salary checks for services that were not performed.

The unit also works closely with federal and other state authorities on a broad range of fraud cases that span multiple jurisdictions.

Several of these cases resulted in regional and nationwide settlements that included activities occurring in Colorado.

## Foreign Prosecutions

Foreign prosecutions occur when a defendant who is a Mexican national has fled the United States and can be subjected 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. With the dedication of a single investigator, the Attorney General's office has developed internationally recognized expertise in compiling the necessary documentation and has formed relationships with Mexican officials to facilitate these prosecutions.

**ATTORNEY GENERAL SUTHERS BRINGS COLORADO CONCERNS TO MEXICO**

(DENVER) – Colorado Attorney General John W. Suthers left today as part of a four-day exchange mission to Mexico. During the trip, a bipartisan delegation of Attorneys General from six Western states will discuss issues of mutual importance with Mexican state and federal officials.

The Attorneys General will discuss the topics of human trafficking and methamphetamine prohibition with their counterparts from Mexico's National Conference of Attorneys General on Friday. They also will meet with Governor Marco Antonio Adame Castillo of the State of Morelos, as well as Eduardo Medina-Mora Icaza, the Attorney General for Mexico's federal government.

"The State of Colorado must work with other governments – both domestic and foreign – to combat issues such as methamphetamine abuse," commented Attorney General Suthers before departing. "We should provide an excellent opportunity to increase our government's working relationship with our southern neighbor, for the benefit of Colorado citizens."

Suthers will meet with United States Ambassador Antonio Garza, Jr., in Mexico City, and will visit Toluca, located approximately 50 miles south of the Mexican capital. Suthers has been in Mexico since 1983, and the two cities have participated in a sister city program for decades. Attorney General Suthers will also travel to Cuernavaca, the state capital of Morelos, to meet with the state's attorney general and city council before returning to Denver.



During 2007, the FPU initiated and completed two new murder cases. The unit's sole investigator filed an Article IV foreign prosecution case in October of 2007 in Mexico City for a murder fugitive wanted by the Adams County Sheriff's Office and the 17th Judicial District. The suspect is allegedly responsible for the shooting of three men -- one fatally -- on April 17, 2005. The murder fugitive is a Mexican national and is known to be residing in Mexico after fleeing to avoid prosecution in Colorado.

This unit also completed the Article IV preparation for a Mesa County Sheriff's Office and 21st Judicial District homicide case. A cold case murder investigation revealed information indicating that the perpetrator had fled Colorado and is currently in Mexico. This case will be presented to the Mexican Federal Attorney General's Office in 2008.

Three more Article IV cases in the works include: ALBERTO FIERRO-PARRA, apprehended in Mexico for the 1997 homicide of Edgar Garcia in the City of Thornton; LAZARO REY MURO, apprehended for a 1999 homicide; RAMON VILLALOBOS, apprehended for a shooting that resulted in the death of Tommy Avalo.

Additionally, the FPU has represented the Colorado Attorney General in numerous training sessions including the Policia Internacional Sonora y Arizona training seminar in Guaymas, Mexico, the Conference of Western Attorneys General in Anaheim, CA, and a cooperative exchange between Attorney General Suthers and the U.S. delegation to Mexico in Cuernavaca, Mexico.

## Victim Assistance Program

This program provides information to victims of violent crimes as required by Colorado statutes. During 2007, the Victim Assistance Program provided notifications to 1,466 victims of violent crimes while the convictions and sentences in the offenders' cases were on appeal. Other services provided to crime victims included 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.

## Department of Public Safety

One attorney in the Criminal Justice Section 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 counsel on all matters affecting those entities, including contract review, personnel issues, drafting and implementation of regulations, and court proceedings.

## 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 Attorney General works closely with the U.S. Attorney's Office and both state and federal agencies in pursuing environmental crimes.

## Colorado Peace Officer Standards and Training Board

The Colorado Peace Officer Standards and Training Board manages and documents the training and certification accomplishments of over 14,000 active peace officers and reserve peace officers appointed by Colorado law enforcement agencies. The POST Board and staff continue to manage and improve the accuracy of records of Colorado peace officers, through the application of the Crown Pointe computer software program. In 2007, POST continued its partnership with the Anti-Defamation League to offer the "ADL/POST Anti-Bias Training for Law Enforcement Officers" program to Colorado law enforcement personnel. 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. More than 11,000 Colorado peace officers have participated in 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.

In September of 2007, POST received approval of a training grant from the Colorado Department of Transportation (CDOT). This grant will provide funding for the continu-

ance of "POST/ADL Anti-Bias Training for Law Enforcement Officers". Coupled with a grant awarded earlier in the year by the Denver Foundation, an internet-based program has been designed to provide the same core competencies and student outcomes as the in-class program. The training is available on the Internet to any officer at his or her convenience. The grant funding from CDOT will improve and extend the program through September 2008.

Additionally, the grant provides funding for implementation of the POST Identification Card (PID), which is secure and verifiable, for every peace officer certified in the state. PID features a bar code containing the peace officer's personal information, and allows for easy scanning and for registration purposes at POST-funded training courses.

During 2007, the POST staff, in partnership with the Integrated Document Solutions Unit of the Colorado Department of Personnel and Administration, completed a comprehensive digital scanning project. The project was designed not only to safeguard officer information, but also to electronically index the training and certification accomplishments of each certified Colorado peace officer. The scanning process allows POST staff members to import all hard copy files into a digitally imaged software program. POST files have been indexed, and are easily searched by name, alias, social security number, date of birth, certification number, or PID.

POST staff and the POST Board training sub-committee worked diligently to complete the POST project's grant funding process. The sub-committee's grant funding recommendations were presented to, and accepted by, the

POST Board. The board approved training grant funding of in the amount of \$720,000 for the period July 1, 2007 through June 30, 2008. 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.

The POST Peace Officer Training Project has allowed Colorado's peace officers to attend over 380,000 hours of quality Continuing Law Enforcement Education. POST has approved over 236 curricula via this project.

During 2007, the Colorado Peace Officer Standards and Training Board reviewed the criminal convictions of thirty-seven (37) peace officers convicted of felonies and certain misdemeanors. In each of those cases, the board revoked the certificate of the convicted peace officer. Revocations actions are entered into the POST electronic database, and are also reported and entered into a national peace officer decertification database.

# Appellate Division

The Appellate Division of the Attorney General's Office is Colorado's prosecutorial authority at the appellate level of the criminal justice system. Division attorneys primarily represent law enforcement when defendants appeal criminal convictions to the Colorado Court of Appeals. In addition, the division represents the interests of the state in habeas corpus actions challenging state criminal convictions in the federal courts, in extradition appeals, and in selected civil appeals (such as property and bond forfeiture actions).

The overwhelming majority of trial convictions are obtained by deputy district attorneys who do felony and misdemeanor trial work for the 22 district attorneys in the state. In 2007, the Attorney General's Appellate Division had 25 attorneys supported by 3 staff members to respond to all of the defense appeals of these felony convictions. Not surprisingly, the division's caseload is both high and demanding.

Because the division responds to appeals that are brought on behalf of convicted criminals, it cannot control the size of its caseload. The division must provide effective and ethical representation in all cases, which range from relatively simple trial court denials to more complicated questions of complicity or liability, equal protection, and double jeopardy. In each case, the attorney must read the trial transcript and other pertinent documents, conduct legal research on each of the defendant's claims, and write an argument explaining why law enforcement should prevail.

While a majority of the cases directly impact only the defendant and the victims, any given case may have a significant impact on how law enforcement authorities conduct searches and arrests, on criminal trials and sentencing hearings throughout the state, on the state's Department of Corrections, and on probation, parole, and county community corrections programs.

In addition to their appellate litigation, Appellate Division attorneys share their expertise in criminal law issues with the state's district attorneys through weekly case law updates, informal advice, and formal presentations at Colorado District Attorneys Council meetings and training sessions.

## 2007 Caseload

The Appellate Division opened 951 new appellate cases in 2007. These cases involved the following convictions:

- 498 assaults or sexual assaults against children
- 333 burglaries and thefts
- 285 kidnappings and assaults
- 266 drug offenses
- 252 homicides
- 239 aggravated robberies
- 95 sexual assaults on adults
- 784 other offenses (primarily felonies)

In managing the appellate caseload, division attorneys performed the following tasks:

- *Motions.* Monitored and responded as necessary to ongoing pleadings in hundreds of cases in the preliminary stages of the appellate process.
- *Opening and Answer Briefs.* Filed 891 opening briefs, answer briefs, and answers to orders to show cause.
- *Oral Arguments.* Appeared at 108 oral arguments to present the State's position and answer questions from the judges. In most instances, panels of three or more division attorneys review the briefs and serve as judges in a mock argument to prepare the attorney handling the case for argument.
- *Petitions for Rehearing.* Filed 66 petitions for rehearing to correct matters that were wrongly decided by the courts.
- *Reply and Supplemental Briefs.* Filed 18 reply or supplemental briefs to clarify existing issues or to address developments that occurred while a case was pending.
- *Briefs in Opposition to Certiorari.* Filed 21 briefs to oppose defense attempts to gain further review in the State Supreme Court.
- *Petitions for Certiorari.* Asked the State Supreme Court to conduct further review in 23 cases that would otherwise have an adverse impact on law enforcement.



# Natural Resources Section

The Natural Resources and Environment Section works on behalf of Coloradoans to protect and improve the quality of our state's natural environment and to ensure intelligent use and development of our natural resources. The section provides legal counsel and representation to the Colorado Department of Natural Resources, the Colorado Department of Public Health and Environment, and any other state agency or official with a natural resource or environmental issue. The section also advocates on behalf of the State Natural Resources Trustees to recover for injuries to natural resources and to restore those resources.

## INTERSTATE WATER & WATER RIGHTS

The Natural Resources and Environment Section protects Colorado's interests in its interstate rivers by participating in the decades-old lawsuit in United States Supreme Court on the Arkansas River (*Kansas v. Colorado*), assisting to implement the settlement on the Republican River (*Kansas v. Nebraska and Colorado*), working with the State Engineer to prepare rules to assure Colorado will continue to meet its compact obligations, and participating in the South Platte River endangered species recovery plan. The section also actively participates in all aspects of the State's efforts to protect and defend interests in the Colorado River and park resources for the Black Canyon of the Gunnison.

During 2007, the section:

- Represented the State Engineer in hundreds of 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.
- 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.
- Successfully obtained decrees in numerous Instream Flow applications for the Colorado Water Conservation Board, including appropriations on South Fork and Smith Fork in the Gunnison Basin.
- Represented the State Engineer's Office in a 30-day trial regarding a plan for augmentation for 215 wells located near the South Platte River.
- Gained awards of \$161,000 in penalties and costs, including attorney's fees, in Division I enforcement actions.
- Achieved favorable results in all Supreme Court litigation for water rights. In *Gallegos v. Co. Ground Water Commission*, the State Supreme Court agreed that the Ground Water Commission only has jurisdiction over surface water rights to determine whether the

boundaries of a designated groundwater basin are proper. Also, the section successfully defended four Supreme Court challenges to the State Engineer's authority to curtail out-of-priority diversions.

## OIL, GAS AND MINERALS

Over the course of the prior year, the Natural Resources Section accomplished much for state interests in oil, gas, and minerals:

- Participated in federal, state, and local team meetings regarding regulation of oil shale development. Worked closely with CDPHE to ensure state air and water quality issues of concern were addressed with respect to oil shale research, demonstration, and development leases.
- Protected the State's interest in reclamation of mined land by representing mining agencies in a national, multi-million dollar bankruptcy involving Asarco, Inc.
- Assisted the Division of Reclamation, Mining, and Safety regarding regulation of uranium mining operations.
- Advised newly appointed commissioners on the Oil and Gas Conservation Commission on procedural and substantive issues.

## STATE AND TRUST LANDS

During 2007, the section:

- Won eviction order and an appeal thereof on behalf of the State Board of Land Commissioners against a former

lessee of the Lowry bombing range property.

- Advised the State Land Board on the enforcement and implementation of a number of public-private development agreements.
- Assisted in the collection of mineral royalties, including collecting over \$2 million of past royalties from Nobel Gas.
- Successfully litigated a state district court constitutional challenge to wildlife officers' authority to enter private property under the "open fields" doctrine.
- Successfully resolved an Animas LaPlata federal district court condemnation action, including just compensation for state wildlife land taken, while preserving the Division of Wildlife's ability to effectively manage its remaining lands around Lake Nighthorse.

## AIR, LAND AND WATER

This unit of the Attorney General's Office:

- Successfully defended a CDPHE construction permit for Xcel Energy's Comanche 3 unit in Pueblo.
- Worked to promulgate state mercury emission standards for coal-fired power plants. The rules will achieve mercury reductions more quickly and more significantly than corresponding federal rules.
- Assisted CDPHE's Air Pollution Control Division in implementing stricter controls on oil and gas production facilities' emis-

sions that cause harmful, ground-level ozone.

- Assisted the Air Pollution Control Division in efforts that will reduce emissions of pollutants that impair visibility in National Parks and wilderness areas.
- Worked with the Air Division and the Department of Justice to successfully resolve a petition in the U.S. Court of Appeals regarding ozone issues in the Denver area.
- Negotiated a consent decree with Kerr McGee Corporation in which it will spend over \$12 million to reduce emissions in Colorado and will also contribute \$150,000 to the Regional Air Quality Council to help remove “dirty” cars from Colorado roads.
- Negotiated with Williams Production Company to install air pollution control devices on its oil and gas operations in western Colorado and pay a \$100,000 civil penalty.
- Worked closely with CDPHE to mitigate potential air and water quality impacts regarding commercial oil shale development on Western Slope public lands.
- Filed an amicus brief in the 11th Circuit Lake Okeechobee case in order to protect Colorado’s interests in interbasin water transfers.
- Continued to work with EPA and the Department of Justice on enforcement actions against national home builders and “big box” retailers for stormwater permit violations at large construction sites in Colorado.
- Represented CDPHE’s Water Quality Control Division in enforcement actions against

Colorado Springs Utilities for discharges of sewage and other pollutants from its domestic wastewater treatment facilities into Fountain Creek. The State assessed \$135,000 in penalties and required corrective action requiring nearly \$100 million in facility upgrades.

- Settled violations of the State’s drinking water regulations at a trailer park in Greeley that serves mainly low-income citizens. The settlement brought the facility into full compliance.
- 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 a river.

## HAZARDOUS AND SOLID WASTE

In 2007, the section:

- Instituted two parallel enforcement actions to require better monitoring of waste chemical weapons stored by the Department of Defense, and to force final treatment of munitions by 2017.
- Worked to promulgate appropriate regulations, draft potential emergency orders, and execute a memorandum of understanding regarding the disposal of infected livestock carcasses.
- Assisted CDPHE in reviewing a redevelopment project proposing construction of a golf course and private ski resort on portions of the Eagle Mine Superfund site.



- Represented CDPHE in the issuance of a radioactive materials license for the safe disposal of the Denver Radium wastes, as well as the safe disposal of residuals from drinking water treatment processes that contain elevated levels of natural radioactivity.
- Worked with the BLM and EPA to develop response cost and natural resource damage claims against Standard Metals Corporation to be used in upcoming settlement negotiations concerning impacts from mining operations near Crested Butte and Silverton.
- Worked with CDPHE, local government and community representatives in distributing natural resource damage funds for restoration projects on segments of the Eagle River impacted by the Eagle Mine.



# 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 Colorado-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 2007, the State Services unit accomplished much in defending Colorado's state government:

- Successfully defended a challenge to most transfers of funds during the state's fiscal crisis.
- Obtained the dismissal of a case against 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.
- Aggressively defended the appeal of the dismissal of all claims in a major constitutional challenge to Colorado's system of financing K-12 education. The dismissal was affirmed by the Colorado Court of Appeals in January 2008.

## CHILD PROTECTION, HUMAN SERVICES AND HEALTH CARE

On behalf of the Department of Human Services, the State Services Section initiated actions against more than 50 entities seeking fines for violations of licensing statutes and regulations.

- Represented DHS in an additional 56 cases, including 18 summary suspensions against child-care providers that failed to comply with regulations or operated without a license.
- Represented DHS in approximately 825 child protection cases, resolving most through mediation.
- Handled 23 cases for the Division of Youth Corrections regarding appropriate levels of detention or the release of juveniles.
- Successfully defended the system for collecting patient payments from veterans at the Colorado Mental Health Institute at Pueblo.
- Recovered more than \$683,000 in Medicaid payments from personal injury settlements and from other liable third parties.
- Settled a lawsuit against DHS and the Department of Health Care Policy and Financing over the departments'

computer system that determines eligibility for public assistance benefits.

- Advised and represented the Department of Health Care Policy and Financing through its Program Integrity Unit in the recovery of \$7.5 million in overpayments.
- Represented the Department of Public Health and Environment by initiating over 20 licensing actions to help maintain the quality of care provided by various health care facilities and emergency medical technicians.

## THE BUSINESS OF STATE GOVERNMENT

Over the past year, section members represented the State in purchasing and procurement matters, including review for legal sufficiency of 305 contracts (not including CDOT contract waiver requests).

## EDUCATION

Over the course of 2007, the State Services Section:

- Continued representing the Charter School Institute. Section members reviewed new applications and monitored seven operating institute charter schools serving more than 3000 students. Four new schools were approved to open in the fall of 2007 and one existing school was allowed to transfer from local district authorization to the institute. One new school was authorized to open in the fall of 2008.

- Resumed representation of the Colorado Higher Education Insurance Benefits Alliance Trust in advisory and transactional capacities.

- Represented Adams State College, AHEC, CollegeInvest, College Assist, College In Colorado, Colorado Historical Society, Colorado School of Mines, Fort Lewis, Mesa State, Metropolitan State College of Denver, and Western State in preparing and negotiating state contracts for various services, products, and real estate, including contracts for providing students with electronic warnings of on-campus emergencies.

- On behalf of the State Board of Education, prosecuted disciplinary actions against 51 educator license holders and applicants, including 15 disciplinary actions involving charges of sexual offenses or misconduct.

- On behalf of the Auraria Higher Education Center, advised and assisted with the preparation of the new master plan for the Auraria campus, including negotiating and drafting a memorandum of understanding among the center and the three Auraria institutions of higher education regarding the implementation of the new master plan.

## WORKERS' COMPENSATION

The State Services Section opened 93 cases to force employer compliance with mandatory workers' compensation insurance statutes. Section members closed 41 cases, either by the employer's fine payment, by settlement, by sending the fine to collection, or by the employer obtaining insurance or closing the business. 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:

- Provided legal guidance to the Public Utilities Commission on gas, electric, telephone, and transportation matters, including major rate cases.
- Successfully defended the jurisdiction of the PUC to determine the appropriateness of interconnection agreements between telecommunications carriers.
- Successfully defended the jurisdiction of the PUC to impose quality of service standards and other consumer protection requirements on wireless telecommunications providers who receive federal high cost support funding.
- Continued to provide 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.
- Contributed to the issuance of several formal Attorney General Opinions involving legal issues regarding a wide range of topics including:
  - Regarding whether United States-born children of undocumented aliens could establish Colorado residency for purposes of in-state tuition at public colleges and universities.
  - Regarding the ability of a non-profit entity that has been designated as a public housing agency under federal law to provide housing services within the geographical jurisdiction of state public housing authorities.
  - Regarding whether the Director of the Charter School Institute is an employee of the Colorado Department of Education for purposes of interpreting the prohibition against a member of the State Board of Education being an employee of the Colorado Department of Education.
  - Regarding whether Colorado public high school students who enrolled at institutions of higher education are subject to verification of lawful presence under House Bill 06S-1023.

# Civil Litigation and Employment Law Section

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

The Colorado Attorney General's Office, through the Civil Litigation and Employment Law Section, defends State agencies and employees that are 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.

The section also represents State agencies in personnel matters in front of the State Personnel Board. Section attorneys provide general legal advice and representation to the Colorado Department of Transportation, the Colorado Transportation Commission, the Department of Corrections, the Colorado State Board of Parole, the Division of Risk Management, and all employees of those agencies. The section attorneys provide advice and training to all State agencies in personnel administration and employment issues.

The section attorneys handled 552 new cases last year as well as 169 new personnel administrative cases in 2007.

## Tort Litigation

The Tort Litigation Unit defended the State in 95 new lawsuits alleging personal and property damage and federal civil rights claims, including 14 cases

monitoring requests for attorneys' fees and costs. The attorneys also continued to handle many cases that were opened in previous years. The new cases handled in 2007 by this unit were brought against 24 different State agencies and entities.

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

- Won 34 motions to dismiss tort cases.
- Won 28 cases filed on appeal. These decisions generally upheld lower court rulings in favor of the State defendants.
- Settled 24 tort cases favorably for the State.
- Had 26 cases dismissed voluntarily or judicially.
- Won seven motions for summary judgment.
- Successfully opposed six petitions for certiorari filed either in the United States Supreme Court or the Colorado Supreme Court.
- Won nearly \$24,000 in costs and fees for the State
- Defended claims cumulatively seeking \$6,217,544 in damages resulting in payments of only \$1,303,670, saving the State almost \$5 million.

## 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 2007:

- Defended approximately 42 employment cases filed in state and federal district courts including 16 new cases. These cases involved over 500 separate claims for relief.
- Aggressively sought and obtained early dismissal and summary judgment, winning every motion to dismiss and motion for summary judgment decided during the year. The victories saved the State the costs and attorneys' fees of going to trial, along with over \$2.2 million in damages the plaintiffs were seeking. Over 41 claims for relief were dismissed.
- Won all issues litigated in the five appellate cases decided during the year.
- Settled seven cases alleging 20 separate claims for relief for a total of \$330,000, saving the State over \$1.4 million in damages.
- Advised several agencies on FLSA issues, including re-classification, time-keeping records, calculation of overtime, and drafting overtime policies.

- Drafted policies on sex harassment, drug testing, and Electronically Stored Information for DPA to offer to the agencies for use in creating agency-specific policies.
- Created and presented training to numerous State agencies.

## Employment Personnel Unit

The Personnel and Employment Law Unit 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 on appeal. They provide advice and training to state agencies and employees regarding personnel matters.

Significant work by this unit in 2007 includes the following activity:

- Provided "front-end" employment advice and consultation concerning hiring, discharging, and disciplining employees.
- Coordinated and presented statewide and agency-specific training seminars directed to State officials and managers to effectively educate, train and manage the workforce.
- Defended 329 cases before the State Personnel Board and the Colorado Court of Appeals, including 169 new cases.



## Transportation Unit

The attorneys in the Transportation Unit provide general legal advice to the Colorado Department of Transportation, the Transportation Commission, and the Colorado Tolling Enterprise Board. This unit represents CDOT in eminent domain cases as well as other types of land use cases such as billboard disputes, inverse condemnation, and access issues. The attorneys are increasingly involved in construction contract disputes. One of the attorneys reviews all CDOT contracts and revises them as needed.

Transportation Unit attorneys accomplished the following in 2007:

- Represented CDOT in 48 new condemnation, access, relocation, billboard, inverse condemnation, eviction and other cases.
- In 2007, the unit attorneys settled or resolved by trial 11 condemnation cases, saving the state approximately \$2.5 million.
- Reviewed 500 contracts for CDOT with an average turnaround time of 3.5 days -- much shorter than the general turnaround time for attorney review of state contracts.
- Prepared and presented a presentation on the “dos and don’ts” of Amendment 41 to CDOT employees in a series of statewide meetings.
- Obtained a favorable ruling in *CDOT & RTD v. Marilyn Hickey Ministries*, a T-REX condemnation case, in which the Colorado Supreme Court held that a landowner is not entitled to compensation for loss of visibility to traffic traveling on I-25.
- Represented CDOT in several state court actions involving subcontractor disputes with prime contractors on CDOT projects, resolving actions without additional cost to the agency.
- Began a program for enforcement of toll violations related to the operation of the I-25 HOT Lanes and assisted the Colorado Tolling Enterprise with legal compliance issues following an adverse decision in a toll enforcement proceeding in Adams County District Court.
- Filed appellate briefs on behalf of CDOT in the Colorado Court of Appeals in two cases against Douglas County and Idaho Springs over those local governments’ authority to regulate state highway projects located within their jurisdictions using so called “1041” regs.
- Obtained nearly \$1 million from engineering design consultants toward payment of a \$6 million damage award to a construction company in connection with construction of a tunnel on US 160 near Wolf Creek Pass.

## Corrections Unit

The lawyers and staff of the Corrections Unit defended the State of Colorado in 393 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, unit lawyers have been handling approximately 1300 claims filed by claimants in the class action ADA lawsuit that was settled, *Montez v. Owens*, et.

*a/*. The lawyers also provided general legal advice to the Department of Corrections 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 Corrections Unit accomplished the following in 2007:

- Obtained favorable rulings in 241 matters brought by inmates and unfavorable rulings in only 26 matters.
- Settled five cases favorably for the state for \$255,750 from demands of \$495,000 resulting in settlements of \$239,250.
- The first assistant in corrections presented a comprehensive review of recent court rulings in the correctional field at the national conference of the National Institute of Corrections for the seventh straight year. The first assistant also met with 20 prison judges at the State Judicial Conference in September of 2007.

## Subsequent Injury Fund and Civil Rights Unit

The attorneys in this unit provide legal advice to the Colorado Civil Rights Division within the Department of Regulatory Agencies in conjunction with CCRD's investigation of charges of employment, housing, and public accommodations discrimination and prosecute those cases which have been noticed for hearing by the Colorado Civil Rights Division. The attorneys and staff also defend the SIF and the Major Medical Insurance Fund, which are part of the Special Funds Unit of the Division of Workers' Compensation within the Department of Labor and Employment. The unit handled the following matters in the last year:

- Three new SIF and MMIF cases; handled a total of eight open cases.
- Fifty-five new civil rights cases for legal and factual analysis and advice to the commission as to whether or not to notice for hearing; handled a total of 59 open cases.
- Settled five civil rights cases favorably.
- Collected a \$15,420 judgment in a civil rights fair housing case. Of that amount, \$7,500 went to the State as a civil penalty and \$7,920 went to the complainants as damages.

# Business and Licensing Section

The five units of the Business and Licensing Section provide legal advice and litigation services to several state agencies including the Department of Regulatory Agencies and its divisions of Banking, Civil Rights, Financial Services, Insurance, Real Estate, Registrations, Securities, and the staff of the Public Utilities Commission. The section also represents the Department of Revenue, the Department of Agriculture and the State Personnel Board.

## Professional Boards Unit

The Professional Boards Unit provides legal representation to a variety of boards, commissions, offices and advisory committees contained within the Department of Regulatory Agencies. The unit supports each represented entity in its mission to protect the public. Legal services include litigation and resolution of licensure, disciplinary, and injunctive matters, as well as advice and guidance with regard to rulemaking and policy issues. Examples of work performed by the Professional Unit include:

### STATE BOARD OF ACCOUNTANCY

During 2007, counsel for the State Board of Accountancy successfully resolved numerous matters, including the discipline of six certified public accountants and one public accounting firm for substandard work. Additionally, counsel negotiated disciplinary settlements in two matters involving certified public accountants based upon Securities and

Exchange Commission action regarding improper audits.

### OFFICE OF BARBER AND COSMETOLOGY LICENSURE

Counsel for the Office of Barber and Cosmetology Licensure resolved a total of six matters last year including revocation of a licensee whom made misrepresentations on his application for licensure and was convicted of four felonies.

### BOARD OF CHIROPRACTIC EXAMINERS

Counsel for the Board of Chiropractic Examiners successfully prosecuted a case against a chiropractor whom made misrepresentations about her credentials, her authority to administer invasive procedures, and who also engaged in serious errors and omissions related to patients' treatment records. The licensee in question was the owner of a drug treatment facility that engaged in controversial intravenous treatments to eliminate addiction. Although the chiropractor's license was revoked following a hearing, she continued to engage in such practices until counsel filed an injunctive action against her in district court.

### REAL ESTATE DIVISION

Counsel for the Real Estate Division represents the Real Estate Commission, the Board of Real Estate Appraisers, and the Mortgage Broker Program. Counsel for the division prosecuted an appraiser who improperly inflated the evaluation of a conservation easement.

ment and mishandled a number of other appraisals. Additionally, counsel for the Real Estate Commission successfully defended the denial of licensure of two separate candidates who could not demonstrate honesty and good moral character. The Division's attorneys also provided substantial legal assistance to the newly created Mortgage Broker Program as it developed new rules, policies and procedures.

## Medical Unit

The Medical Unit provides legal representation to the state boards within the Department of Regulatory Agencies that regulate physicians, physician assistants, dentists, nurses, certified nurse aides, psychiatric technicians, pharmacists, and podiatrists. Examples of work performed by the Medical Unit include:

### BOARD OF MEDICAL EXAMINERS

Counsel for the Medical Board successfully prosecuted and resolved several complex disciplinary actions against physicians who engaged in unprofessional conduct. For example, counsel prosecuted a case against a family physician who engaged in over forty acts of substandard practice. The physician's license was revoked following a two week hearing. Another prosecution by the board's attorneys resulted in the revocation of the license of a physician who provided substandard pain management to a number of patients.

At the invitation of the Colorado Supreme Court, the board's attorneys filed an amicus brief in a case in which a physician attempted to file a civil action against a hospital that had

subjected him to internal professional review. In a victory for public protection, the court agreed with the board's position.

### BOARD OF PHARMACY

After the Pharmacy Board summarily suspended the licenses of a pharmacy and its owner, the board's attorneys successfully negotiated a settlement by which the pharmacist permanently relinquished his license and the pharmacy underwent a change in ownership and agreed to pay a \$250,000 fine. The underlying allegations included the illegal distribution of human growth hormone that was manufactured in and imported from China.

### BOARD OF DENTAL EXAMINERS

Counsel for the Dental Board filed formal charges following the summary suspension of two unrelated dentists whose practices were alleged to have utilized substandard infection control. The attorneys negotiated a settlement for permanent relinquishment in one case, while the other is pending.

### BOARD OF NURSING

Counsel for the Board of Nursing resolved approximately 175 cases involving nurses, nurse aides, and psychiatric technicians. Additionally, the Board's attorneys provided general counsel services, including legal assistance during implementation of the nurse licensure compact involving approximately twenty states.

## 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. The unit provides general counsel advice to the Insurance Commissioner, Securities Commissioner, Banking Commissioner, and Commissioner of Financial services, and also represents the commissioner and/or the division in licensing and other litigation matters. Unit attorneys additionally provide general representation of the State Fair. The unit represented the Mined Land Reclamation Board (MLRB) in administrative hearings and in assessing the regulatory impact of oil shale exploration and drilling in Colorado. Examples of work performed by the Financial Unit include:

### DIVISION OF INSURANCE

Unit attorneys successfully defended an Order issued by the commissioner in the state

district court following a market conduct examination of an insurance company's business activities in Colorado.

### DIVISION OF SECURITIES

Cases involved enforcement actions brought in Denver District Court; in licensing actions against securities sales representatives, securities broker-dealers, and securities investment advisers; in cease and desist actions; and in subpoena enforcement matters. Unit attorneys represented the Division of Securities in bringing an enforcement action against Life Partners, Inc., one of the nation's largest viatical investment companies, and obtained a temporary restraining order prohibiting the sale of its investments in Colorado pending the litigation.

### DIVISION OF BANKING

During 2007, unit attorneys represented the Division in shutting down American International Depository and Trust.

### DIVISION OF FINANCIAL SERVICES

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

### DEPARTMENT OF AGRICULTURE

Unit attorneys advise the department on a wide variety of matters, including rulemaking, chronic wasting disease, Pet Animal Care Facilities Act enforcement matters, firearms policy, emergency preparedness, avian



Members of the Business and Licensing section participate in a mock trial.



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 agricultural 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.

## Public Utilities Commission Litigation Unit

The Public Utilities Commission regulates the rates, charges, services, and facilities of public utilities within Colorado. The Public Utilities Litigation Unit of the Attorney General's Office primarily represents the litigation staff of the PUC. The unit appears before the PUC 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 2007, the PUC Litigation Unit handled:

- Fifty administrative cases before the PUC on behalf of staff in matters concerning natural gas, electric, telecommunications, and water utilities;
- Five district court and judicial review cases representing the PUC and the commissioners thereof; and

- Twenty-five enforcement proceedings on behalf of staff against motor carriers, including taxis, luxury limousines, airport shuttles, and household goods movers.

Examples of the PUC Litigation Unit's significant cases include:

- Represented staff in Public Service Company of Colorado's first plan filed pursuant to Amendment 37 and the Renewable Energy Standard Act of 2007, which require that utilities provide a percentage of their energy from renewable sources.
- Represented the PUC before the Colorado Supreme Court to obtain a ruling authorizing the PUC to issue an operating certificate to a utility seeking to provide service within the City of Fort Morgan, a home rule municipality, because the PUC determined the City failed to provide adequate utility service.
- Represented staff in Nunn Telephone Company's application for high cost support, where the company sought a subsidy paid by Colorado ratepayers without regulatory scrutiny. Staff was successful in ensuring that some regulatory oversight remained when obtaining such a subsidy.
- Successfully represented staff in Public Service's application for approval of a contingency plan for meeting its 2013 electric resource need.
- Represented staff in a complex merger and acquisition between interrelated Aquila corporation companies and Black Hills Corporation, including the question of whether Colorado ratepayers should pay \$60 million over and above the actual costs.

- Assisted transportation staff in complying with legislation requiring criminal background checks of taxicab drivers and owners of household goods carriers companies.

## 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, the liquor licensing authority, the Motor Vehicle Division, and the Property Tax Administrator. Examples of work performed by the Revenue Unit include:

### COLLECTING TAXES IN BANKRUPTCY

The team bankruptcy attorney provided legal advice to the Department of Revenue in bankruptcy cases concerning the statute of limitations for collection of tax or for asserting a secured or priority claim for taxes. The team handled approximately 611 bankruptcies and adversary actions. The volume of serious cases (issues and amount to tax) has increased with the subprime lending crisis as these lenders file for protection to liquidate while owing large amounts of Colorado tax.

### COLLECTING TAXES GENERALLY

Team lawyers have appeals concerning capital gains, conservation easements, tobacco products tax, consolidated and combined returns for corporations, exemption of manufacturing machinery used to produce electrical energy, and tax frauds in state courts. The team also handled numerous tax protester suits alleging that Colorado citizens have no obligation to file and pay Colorado in-

come tax, challenging whether Colorado is legitimately a state, and challenging the new frivolous submission penalty statute.

Team lawyers provided daily legal advice on whether Revenue had authority to make a particular tax seizure to force payment of past due taxes. Team lawyers helped to research and write tax regulations, and worked on major legal opinions and a host of informal opinions.

### REPRESENTING BOARDS

This team represents the Colorado Limited Gaming Control Commission, the Motor Vehicle Dealer Board, the Boxing Commission, the Colorado Racing Commission and the Liquor Administrator. 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 lawsuit and secure and verifiable rules.