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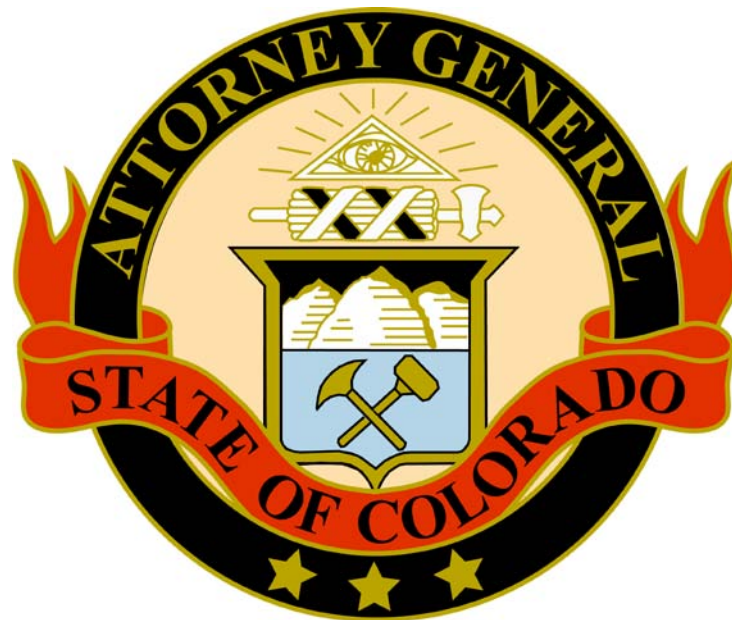
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Attorney General John W. Suthers



On Jan. 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 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 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 Gov. 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 1994-1995, and senior vice president of the Colorado Bar Association in 1996-1997. 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 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 33 years and have two daughters, Alison, an attorney in Denver, and Kate, a post-graduate business student and a lieutenant in the United States Navy.

Daniel Domenico
Solicitor General



Attorney General Suthers appointed Dan Domenico as Solicitor General of Colorado in April 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.

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 2005 after serving as chief legal counsel to Colorado Gov. 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.

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.

Geoff Blue

Deputy Attorney General for Legal Policy and Governmental Affairs



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

Prior to joining the office, Mr. Blue practiced law with Farfield 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-

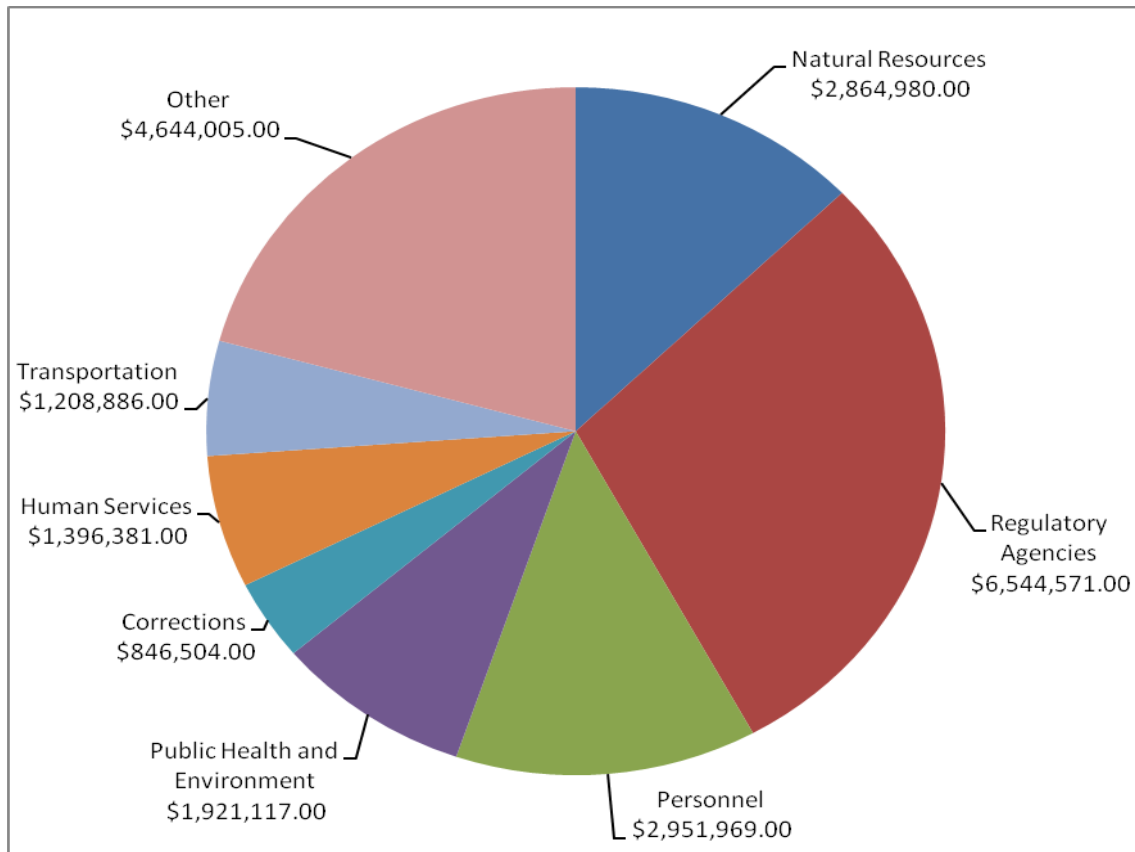
Choen, LLP.

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 the Georgetown University Law Center in 1998. During law school, he served as president of the Society of Law, Health and Bioethics.

The Department of Law by the numbers

Total FY2008-2009 appropriation	\$47,956,013
Percent of statewide appropriation	0.10%
Total full-time employees	390.9

**Legal services expenditures by agency
Fiscal Year 2008-2009**



2008 Legislative Initiatives

The Office of the Attorney General saw mixed results in its 2008 legislative agenda. The office saw Senate Bill 77, which created civil and criminal penalties for the use of computers to circumvent ticket-purchase limits, pass with the support of 96 House and Senate lawmakers. The governor signed the measure into law.

The Senate State, Veterans and Military Affairs Commission struck down the office’s effort to ban certain types of robo-calls, Senate Bill 146, in a 4-1 vote. The committee also struck down a similar proposal, Senate Bill 48, which the office said likely would be struck down as unconstitutional.

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 for residential, small business and agricultural public utility ratepayers. The enforcement activities during 2008 are discussed in more detail below.

Consumer fraud, antitrust and tobacco settlement enforcement

The Attorney General’s Office enforces a wide variety of state and federal consumer protection and antitrust statutes, as well as the terms of the Tobacco Master Settlement Agreement and related statutes. The office has also engaged in significant education and public outreach efforts, especially with respect to the victimization of older Coloradans.

Senior outreach: In October, the Attorney General sponsored a Summit on Senior Financial Exploitation in Denver, attended by more than 190 professionals in law enforcement, adult protection, health care, financial services, housing and other disciplines. The summit explored current trends in senior financial exploitation and the challenges that exist to preventing

exploitation. The best ideas from the Summit will be synthesized into a final report and will include formal recommendations for legislation, better professional training and improved coordination among the stakeholders working to prevent financial exploitation.

Mortgage fraud: Our mortgage fraud group undertook a number of investigations throughout the year designed to clean up false mortgage advertising, hold mortgage brokers accountable for deceptive brokering practices, and ensure greater protections for homeowners facing foreclosure.

Highlights include:

- The Attorney General reached settlements with four mortgage brokerage firms and their principals to resolve false mortgage advertising and marketing. The firms agree to cease the practice of advertising deceptively low “teaser” rates and ensure that material terms, such as an APR and other conditions of the loans, are prominently displayed in advertisements.
- The Attorney General filed two lawsuits and reached a settlement with another mortgage broker to address certain deceptive practices that they were using to originate loans. These cases go beyond just deceptive advertising and involve fraudulent loan origination practices.

Foreclosure Rescue Firms: The Attorney General took action against 11 firms that were out of compliance with the Foreclosure Protection Act. Each company agreed to cease soliciting Colorado homeowners until they come into compliance with the Foreclosure

Protection Act. Some of these cases resulted in refunds to consumers.

Foreclosure Prevention: The Attorney General continues to work with various local partnerships to support education and outreach to affected homeowners through the Foreclosure Hotline. He also continues to support the State Foreclosure Prevention Working Group, which is a multistate group composed of 13 state attorneys general and three state banking departments. This group is working with loan servicing companies to modify loans where it makes economic sense to keep the borrower in the home rather than let it fall into foreclosure.

Antitrust: Highlights of our antitrust enforcement activities include:

- Reaching a settlement in the long-standing Ovcon Litigation, which was filed in 2005. Colorado led this multistate litigation which charged Barr Laboratories and Warner Chilcott Pharmaceuticals with antitrust violations for conspiring to prevent a generic drug from being brought to the market. Under the Attorney General's leadership, the states settled with the remaining defendant, Barr Laboratories, for \$5.9 million.
- Seventeen states, including Colorado, joined the U.S. Department of Justice in October 2008 in suing to block the proposed merger of JBS Swift and National Beef, alleging a loss of competition in the upstream market for the purchase of feeder cattle as well as in the downstream market for selling boxed beef to retail outlets. A merger was cancelled in the face of opposition.

Consumer Fraud: The Attorney General continued to aggressively pursue deceptive trade practices in a variety of industries, including charitable

organizations. Some of the highlights include:

- *State v. Colorado Humane Society & Mary Warren et al.* (08CV2659): A 14-month investigation resulted in the filing of a lawsuit against this nonprofit corporation and its management alleging violations of the Colorado Charitable Solicitations Act, the Pet Animal Care Facilities Act, the Colorado Consumer Protection Act and the Colorado Revised Nonprofit Corporations Act. At the request of our office, a custodian was appointed to safeguard this charitable asset
- *State v. Family Relief Fund, Raymond Smith, and Marlene Stokes* (08CV5049): Filed suit on Nov. 24, 2008 and obtained a preliminary injunction against an unregistered charity. The complaint alleged the defendants falsely claimed to have tax-exempt status and misrepresented how donations would be used.
- *State v. AEI, et al.* (07CV908): The Office settled a lawsuit filed in 2007 against American Engine Installations, a Texas corporation, and its Colorado franchisees, alleging that defendants misrepresented estimates on engine repair services in order to collect large deposits from unsuspecting consumers. As part of the settlement, the defendants were barred from conducting an engine-repair business in Colorado and must pay the state \$300,000 in restitution, penalties and costs.
- *State v. LANS, et al.* (08CV666): The office brought suit in January 2008 against Legal Aid National Services, Inc. d/b/a The LANS Corp. (LANS) and its principals who misrepresented the "legal services" they provided. None of the defendants responded to the lawsuit and a default judgment was entered for \$1 million dollars in damages, fees and costs and a permanent injunction against advertising and performing "legal services" including preparation of legal documents.
- *State v. BASAD, et al.* (08CV9717): The Office filed suit against a Colorado-based company that operated a call

center for emergency locksmith services. Numerous consumers had complained that Basad misrepresented the price for its locksmith services and failed to disclose the actual expected charges.

Uniform Consumer Credit Code and Collection Agency Board

The Consumer Credit Unit enforces a series of state credit-related laws: the Uniform Consumer Credit Code, which includes the Consumer Equity Protection Act and the Deferred Deposit Loan Act, the Fair Debt Collection Practices Act, the Debt-Management Services Act, the Credit Services Organization Act and the Rental Purchase Agreement Act.

Highlights from 2008 lending-practices cases include:

- Supervising 1,209 licensed lenders consisting of payday lenders (47 percent), mortgage companies (39 percent), finance companies (12 percent), and small installment lenders (2 percent). Enforced credit laws against other firms, including 870 companies filing notifications and collecting their own credit contracts.
- Conducting 667 compliance examinations of licensed lenders and required them to take corrective action and refund overcharges as appropriate and investigating 368 written consumer complaints against licensed lenders and other creditors.
- Refunding more than \$3 million dollars in overcharges to consumers from compliance examinations, investigations, and legal and administrative actions and collected \$124,500 in penalties, educational funds and cost reimbursements.
- Investigating or litigating 32 cases including a finance company's failure to provide consumers with right to cure default notices, an unlicensed payday lending company charging excess fees,

an automobile servicing company charging non-permitted fees to change payment due dates, and various excess fees on installment payments charged by health clubs and their servicing companies.

- Filing a lawsuit against a lender that makes small installment loans at 10 Colorado locations alleging that it failed to assess consumers' repayment ability, falsified application information, and charged excessive fees.

In the arena of debt collection, the Attorney General:

- Oversaw the activities of 674 licensed collection agencies.
- Investigated or litigated 44 cases and collected \$107,300 in fines. Most of the cases involved unlicensed debt collection activities.
- Handled 736 written complaints against collection agencies in addition to telephone complaints and inquiries.
- Issued 59 cease and desist notices to unlicensed collection agencies.
- Filed a lawsuit against a law firm alleging that it threatened legal action on old debts beyond the statute of limitations and misrepresented that civil penalties were due prior to obtaining court judgments.

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 Colorado Public Utilities Commission and in other forums on issues concerning electricity, natural gas, and telephone issues.

Highlights from 2008 include:

- Working on behalf of the OCC in 80 matters before the PUC, including protests, interventions and rule-making activities. In fiscal year '08, consumer realized savings, based on the OCC's

- representation, was more than \$43 million.
- Filing Advice Letter No. 727 on April 18, 2008, which is Public Service's Phase II gas rate case. The hearing commissioner issued his recommended decision on Oct. 24, which determined that the service and facilities charge should not be increased as proposed by Public Service.
 - Aquila Networks-PNG filed Advice Letter No. 528 on June 30, 2008, which is a Phase I gas rate case, seeking to increase its annual revenue requirement by nearly \$2.7 million, or 14.94 percent. On July 15, Aquila filed its notice of date of closing with the commission in which it stated that Aquila transferred all of its Colorado utility properties to Black Hills/Colorado Electric Utility Company, LP on July 14, 2008. Black Hills filed its Phase II testimony Sept. 19 with the following proposed rate impacts: 4.13 percent increase for residential; 4.40 increase for small commercial; 5.02 percent decrease for large volume; 26.24 percent increase for large volume transportation and \$0.01 increase per month for small volume and irrigation classes. A hearing will be held in 2009.
 - On Aug. 5, 2008, Black Hills filed an application for approval of its 2008 Colorado Resource Plan. The 2008 CRP sets forth the company's proposed resource plan between now and 2013 with the proposed acquisition of 2 mW of solar in 2008, 2 mW of solar in 2012, at least 60 mW of wind (subsequently amended to 20 mW of wind) and 346 mW of natural gas-fired combustion turbines before 2012. Black Hills stated that its 2008 CRP filing was based on the Dec. 31, 2011 termination of a restated power sales agreement with Public Service. As a result of the Public Service PPA termination, Black Hills will have a capacity deficit of approximately 75 percent. A hearing for Phase I will be held in 2009.

Criminal Justice Division

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 through either direct filings or use of the Statewide Grand Jury.

Securities Fraud

Pursuant to Colorado law, 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 is made up of two attorneys, two investigators and a paralegal who all work on securities fraud cases full time.

The unit obtained 59 felony convictions at trial, and, for the year, the unit obtained a total of 69 felony convictions which resulted in restitution orders for Colorado victims of securities fraud totaling more than \$20.6 million. The unit opened nine investigations and filed six felony criminal cases throughout the state. Of the cases opened, five were initiated by the Attorney General’s unit, and four cases were referred by the Colorado Division of Securities.

The unit’s legal victories include a series of high-profile convictions and guilty pleas:

- In January, an El Paso County jury found Doug Scott guilty of securities fraud and theft for his role in a hedge fund scheme. Scott was using investors’ money, for example, to purchase an airplane and to fund the construction of Scott’s personal residence. He was sentenced to 15 years probation and owes nearly \$1.8 million in restitution to 148 victims.
- William Leary pleaded guilty in June to 11 counts of securities fraud for his role in convincing investors’ to put up money for what they thought were baseball facilities. He was sentenced to four years probation and owes \$26,300 worth of restitution to two victims.
- In August, a Larimer County jury found Gene Little guilty of 34 securities fraud charges and one theft charge after he used his church and community affiliations to fraudulently obtain \$2 million in investments. Little promised investors a 15 percent return on their money, but only \$8,000 of the “investments” were ever invested. Little was sentenced to six years in prison and owes 38 Colorado victims nearly \$1.9 million.
- In September, Steven Sumner pleaded guilty to six count of securities fraud

and five counts of theft for convincing investors to let him to use their money to back home loans and real estate purchases. Sumner was sentenced to seven years in prison and owes more than \$57,000 to seven Colorado victims.

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 to two attorneys, four investigators and a paralegal, all assigned full-time to insurance fraud matters. During 2008, the Insurance Fraud Unit received 337 referrals of potential criminal cases relating to insurance fraud. As a result, the unit opened 54 new felony investigations. The unit filed 17 felony cases throughout the state, five of these cases were initiated by indictments issued by the Statewide Grand Jury, the remainder were filed by complaint and information. The unit resolved 19 cases through plea negotiations, as a result of these negotiated settlements; the unit achieved new restitution orders totaling more than \$1.1 million in 2008.

Medicaid Fraud

In 2008, Colorado paid more than \$3 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 a training resource on abuse investigation

and prevention. Two attorneys, eight investigators, an auditor, a nurse investigator, a paralegal and a program assistant accomplished the unit's work in 2008. Two of these positions, the nurse investigator and a criminal investigator, were added for 2008.

In 2008, the unit opened 46 new investigations and filed six new cases of fraud, including impersonation and durable medical equipment fraud. The unit obtained three criminal convictions and nine civil settlements, with recoveries totaling more than \$5.3 million. Sample convictions include: The ringleader of an organization that billed the state for over \$1 million in false and inflated wheelchair repair claims; a defendant who submitted false supplier invoices to support nerve stimulation bills that were considerably higher than the true prices; and a defendant working as a nurse under the name and license of an actual nurse residing in a different state.

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 under Article IV of the Mexican Penal Code. 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.

During 2008, the FPU initiated three murder cases and prepared two additional Article IV cases. Additionally, the FPU has represented the Colorado Attorney General in numerous training sessions including the Policia Internacional Sonora y Arizona training seminar in Puerto Peñasco, Sonora, Mexico, the Conference of Western Attorneys General in Seattle and a cooperative exchange between Attorney General Suthers and the Mexican Attorneys General delegation. The unit's sole investigator has been instrumental working with CWAG, Council of State Governments and the U.S. Agency for International Development. Several MOUs have been signed between western attorneys general and Mexican attorneys general in a bi-national agreement to share criminal justice resources and training exchanges for criminal investigators and prosecutors from Mexico as our southern counterparts convert to an adversarial system of justice similar to ours. The FPU was responsible to coordinate the first non-border training exchange with fifteen state investigators from Baja, Mexico, through the collaboration of prosecutors and law enforcement agencies in Colorado.

The FPU has a total of 11 open cases, three awaiting a court ruling, six pending apprehensions and two in the process of preparation for filing under Article IV. At this reporting period, FPU has six murder cases completed, fugitive arrested and prosecuted, resulting in sentencing orders totaling more than 117 years to a Mexican federal prison thus saving Colorado millions of dollars of incarceration costs.

Special Prosecutions

The Attorney General has statutory authority to prosecute specifically enumerated crimes including environmental violations, tax fraud, mortgage fraud, election fraud, workers compensation fraud and other types of fraud related offenses. Additionally, the Attorney General functions as the legal adviser to the statewide grand jury. This duty allows for the prosecution of complex criminal cases which occurred in multiple judicial districts throughout the state. The Special Prosecutions Unit, which is comprised of five attorneys, four investigators, and one support staff employee, is responsible for many of the state's multiple jurisdiction matters, as well as special investigations that can be referred by other state agencies or the governor. Unit attorneys prosecute cases throughout Colorado either under the auspices of the Attorney General and as specially appointed deputy district attorneys in the 22 judicial districts.

In early 2008, Gov. Bill Ritter assigned the Attorney General to take lead in the re-investigation of the 1987 murder of Peggy Hettrick in Fort Collins. A prosecutor and three unit investigators have been assigned to work with the deputy attorney general for criminal justice as well as with an attorney and an investigator from the Attorney General's homicide assistance team to conduct this investigation.

In 2008, this unit indicted 10 defendants who committed a sophisticated mortgage fraud scheme in the Metro Denver area. The leaders of this scheme were charged under the Colorado Organized Crime

Control Act and were prosecuted by a Special Prosecutions Unit in Adams County. This unit continued with its prosecution of 16 offenders associated with a drug and auto-theft ring in the Four Corners area. This particular prosecution included the conducting of a successful multi-week jury trial in November 2008 by this unit in Durango against a key leader of the criminal enterprise, who was convicted of violating the COCCA statute. Other cases indicted and prosecuted by this unit included a four defendant home burglary ring whose goal was to break into new homes throughout the Denver metro area, steal and then sell high end appliances. The ring leader pled guilty to violating the COCCA statute and was sentenced to prison. Unit prosecutors were also assigned to prosecute a six defendant heavy equipment theft ring in Adams County who were indicted by the Statewide Grand Jury this year.

Protecting Colorado's citizens from the fraudulent use of state funds is an important function for the special prosecutions unit. Multiple cases, including at least 11 matters of significant tax fraud were concluded this year. The tax fraud cases as a whole resulted in excess of \$250,000 of restitution being ordered on behalf of the citizens of Colorado. For example, unit prosecutors handling the tax crime cases were responsible for the conviction of a businessman in a tax evasion and theft scheme resulting in approximately \$60,000 of restitution. Twenty-three persons were successfully prosecuted for felonies involving unemployment insurance fraud, with more than \$100,000 in restitution being ordered by courts. Fifteen cases of workers'

compensation insurance fraud resulted in convictions and restitution orders of \$263,000.

Protecting Colorado's natural resources also is an important part of this unit's responsibility. The Environmental Crimes Unit within the Special Prosecutions Unit filed seven environmental crimes prosecutions in the last year including a significant grand jury indictment relating to the improper removal and disposal of asbestos from buildings. The Attorney General works closely with the U.S. Attorney's Office and both state and federal agencies in pursuing environmental crimes.

Homicide Assistance Team

The Attorney General employs an expert team consisting of two attorneys, a seasoned homicide investigator and one support staff employee to provide critical support and assistance to the elected district attorneys and to local law enforcement throughout the state in matters involving all aspects of active and cold case homicide investigation and prosecution. In 2008, members of this assistance team assisted local prosecutors and investigators in many counties, including Larimer, Park, El Paso, Arapahoe, Douglas, Montrose and Elbert counties. The unit attorneys and its investigator are also responsible for the conducting of invaluable training for this state's prosecutors and investigators.

Department of Public Safety

The Department of Public Safety is the principle state law enforcement agency and provides a leadership role in policy

development and implementation of a wide range of criminal justice issues. This unit of one attorney provides legal advice on policy decisions, attends staff meetings, is a voting member of the asset forfeiture committee, advises numerous boards and commissions, and attends rule making hearings and quarterly CSP SOAR meetings.

In 2008, the DPS was designated the lead state agency in providing security for the Democratic National Convention. This attorney advised DPS throughout the one-year planning process, coordinated legal issues with federal and local attorneys, drafted the Inter-governmental Agreement between the state and the city and county of Denver, and worked with the governor's legal counsel to pre-draft executive orders in case of catastrophic events.

In 2008, this attorney represented DPS in numerous district court cases, litigated 12 Personnel Board hearings, filed three responses to EEOC investigations, briefed and argued two appellate cases, reviewed and drafted contracts, MOUs and intergovernmental agreements responded to frequent open records requests, and handled nearly 200 general requests for legal advice.

Colorado Peace Officer Standards and Training Board

The Colorado Peace Officer Standards and Training Board manages and documents the training and certification accomplishments of more than 14,400 active peace officers and reserve peace officers appointed by Colorado law enforcement agencies. The POST Board

and staff continue to manage and improve the records of Colorado peace officers through the application of the *Crown Pointe* computer software program.

POST continued to partner with the Anti Defamation League to offer the “ADL/P.O.S.T Anti-Bias Training for Law Enforcement Officers” program to officers. This project meets the peace officer training requirements of §24-31-309(c)(5); provides the training to the state’s law enforcement agencies. More than 13,000 Colorado peace officers have undergone the program and other approved-agency training programs.

Additionally, the anti-bias training curriculum is now available on the Internet. The Internet program addresses the same core competencies and student outcomes as in the in-class program, and is available on the Internet to any peace officer and other law enforcement agency employees, at their convenience and at any computer.

POST staff and the POST Board training subcommittee worked diligently to complete the second grant funding process. The subcommittee’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, 2008 through June 30, 2009. Four statewide 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 facilitated

training programs unique to the officers serving within their region.

During 2008, the POST Board reviewed the criminal convictions of 23 peace officers convicted of felonies and certain misdemeanors. In each of those cases,

the certificate of the convicted peace officer was revoked by the board. Colorado revocations actions are entered into the POST electronic database and are also reported and entered into a national peace officer decertification database.

The 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 represent law enforcement when defendants appeal criminal convictions in the Colorado appellate courts. In addition, the division represents the interests of the state in extradition appeals, in selected civil appeals (such as property and bond forfeiture actions) and in the federal courts in *habeas corpus* actions challenging state criminal convictions.

The overwhelming majority of trial convictions are obtained by the hundreds of deputy district attorneys who do felony trial work for the 22 district attorneys in the state. As of the end of 2008, the Attorney General's Appellate Division had 27 full-time attorneys supported by three staff members to respond to all of the defense appeals of these felony convictions. Not surprisingly, the division's caseload is high and demanding.

Because the division responds to appeals that are filed 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 of postconviction relief to more complicated constitutional questions and issues of statutory interpretation and trial practice. 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.

2008 Caseload

The Appellate Division opened 1,130 new appellate cases in 2008 (179 more cases than 2007). Division attorneys successfully upheld criminal convictions and/or sentences in 90 percent of their cases. These cases involved the following convictions:

- 802 assaults or sexual assaults against children
- 399 burglaries and thefts
- 376 kidnappings and assaults
- 300 drug offenses
- 339 homicides
- 229 aggravated robberies
- 96 sexual assaults on adults
- 932 other offenses (primarily felonies)

In managing the appellate caseload, among other duties, division attorneys also 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 936 opening briefs, answer briefs and answers to orders to show cause (45 more than 2007).

Oral Arguments. Appeared at 146 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 mock arguments to prepare the attorney handling the case for argument.

Petitions for Rehearing. Filed 50 petitions for rehearing to correct matters that were wrongly decided by the courts.

Petitions for Certiorari. Asked the Colorado Supreme Court to conduct further review in 22 cases that would otherwise have an adverse impact on law enforcement.

Significant cases

People v. Washington and People v. Sayles, 186 P.3d 594 (Colo. 2008). In the trial court, Defendant Washington raised a claim that his right to a jury selected from a fair cross-section of the community would be violated, and he presented an expert witness who provided a statistical analysis to demonstrate the discrepancy between the percentage of African-Americans and Hispanics in the typical jury venire in Arapahoe County and in the community. Defendant Sayles, who was being tried in a different case in

Arapahoe County, raised the same claim and relied on the evidentiary hearing that had been held in Washington's case to support his claim. The Supreme Court held that no specific statistical measure should be excluded in determining whether the fair cross-section standard is met. It concluded, however, that the statistics offered by the defense expert did not demonstrate an unreasonable or unfair representation of Hispanic and African-American citizens in the jury pool in relation to the representation of those groups in the community, and thus neither defendant was deprived of his rights under the Sixth Amendment. However, the court disapproved of the jury panel selection practice that provided jury service credit to Aurora municipal court jurors (thus taking them out of the larger county pool), and it directed that this practice stop. The concurrence by Justice Coats questioned whether the court had supervisory powers over the jury commissioner that would permit it to direct such action in this criminal case.

Sanoff v. People, 187 P.3d 576 (Colo. 2008). Defendant Sanoff was a partner in, and responsible for, the financial dealings of a rehabilitation clinic. She used that position to embezzle more than \$450,000. For a variety of reasons, the restitution order was not entered until two years after Sanoff was sentenced (both defense and prosecution counsel consented to the delay). Sanoff argued that her conviction was void because the mittimus did not include the restitution order. The SC held that, because statutory law allows imposition of restitution after a defendant has been sentenced, judgments are

not void if they are not imposed simultaneously. All that is required for the conviction to be final is a court finding that the defendant is obligated to pay restitution; the amount of that obligation can be determined later.

People v. Tixier, ___ P.3d ___, 06CA1534 (Colo. App. 10/16/08).

Convictions: sexual assault on a child by one in a position of trust. Held:

- An appellate court reviews a trial court’s findings under §18-3-414.5 for clear error, and reviews de novo the question of the court’s factual findings are sufficient to support the legal conclusion that the defendant is a sexually violent predator within the meaning of the statute.
- SVP can apply in the context of a non-stranger relationship (here, a father victimizing stepdaughter): The COA held that, under §18-3-414.5(1)(a)(III), the defendant “promote[s] a relationship [with the victim] primarily for the purpose of sexual victimization” when he or she (1) interacts with a victim and, primarily for the purpose of sexual victimization, attempts but

fails to establish a relationship with the victim, or (2) encourages a victim with whom the offender has a limited relationship to enter into a broader relationship, primarily for the purpose of sexual victimization.

People v. Gosselin, ___ P.3d ___, 07CA0799 (Colo. App. 10/16/08).

Convictions: second degree murder. Held:

- Evidence obtained after a defendant invoked his right to counsel in violation of *Edwards v. Arizona*, 451 U.S. 477 (1981), is admissible if the statements leading to the discovery of the evidence are voluntary. Extends *United States v. Patane*, 542 U.S. 630 (2004) (exclusionary rule does not apply to evidence obtained from unwarned but voluntary statements); applies *People v. Bradshaw*, 156 P.3d 452 (Colo. 2007).
- Where a trial court’s suppression ruling makes no reference to the Colorado constitution, the appellate court will presume that the trial court relied upon federal constitutional standards.

Natural Resources Section

The Natural Resources and Environment Section works on behalf of Coloradans 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 damages for injuries to natural resources and to restore those resources.

Interstate water and water rights

The Natural Resources Section protects Colorado’s interests in its intrastate waters and interstate rivers. Over the course of 2008, the section:

- Actively represented the State Engineer's Office in a 16-day trial in a large-scale agricultural-to-municipal change of water rights from the South Platte River.
- Successfully negotiated a final decree quantifying the United States’ claims for reserved water rights in the Black Canyon of the Gunnison National Park, ending a dispute spanning more than 30 years.
- Protected the state’s interests in litigation and legislation regarding the Colorado River Compact and the Upper Colorado River Compact.
- Participated in the Aspinall Unit re-operations Endangered Species Act review and National Environmental Policy Act processes on behalf of the state.
- Represented the state engineer in hundreds of water rights proceedings in Colorado's water courts, including several appeals to the Colorado Supreme Court. Achieved favorable results in all Supreme Court litigation for water rights – Supreme Court agreed that Ground Water Commission only has jurisdiction over surface water rights to determine whether the boundaries of a designated ground water basin are proper.
- Successfully defended four Supreme Court challenges to the state engineer's authority to curtail out-of-priority diversions.
- Assisted the Colorado Water Conservation Board, the State Land Board, Colorado Department of Transportation, Department of Corrections, the Division of Wildlife, Division of Parks and Outdoor Recreation and the Colorado Historical Society in acquiring new water rights and protecting existing water rights.
- Successfully obtained instream flow decrees for the Colorado Water Conservation Board, including appropriations in Water Divisions 1, 2, 5 and 7.
- Provided representation for over 200 cases for the Colorado Water Conservation Board encompassing all seven water court divisions.
- Began an in-depth, long-term analysis of Colorado State Parks' water rights in order to create a comprehensive inventory of ground and surface water rights owned, leased or used at each of the state's 45 parks. The inventory will be used to identify potential water right issues, determine which areas need additional water rights, and which water rights need protection or development.
- Represented the State Engineer's Office in a 30-day trial regarding a plan for

augmentation for 215 wells located on the South Platte River.

- Represented the State Engineer’s Office and the Colorado Water Conservation Board in their successful efforts at trial to achieve a state law based water right for the Great Sand Dunes National Park.

Oil, gas and minerals

Over the course of 2008, the section also worked to protect the state’s interests in its mineral wealth, including:

- Assisting and advising the Colorado Oil and Gas Conservation Commission and its staff on numerous procedural and substantive issues in conjunction with one of the largest rule makings any state agency has undertaken.
- Negotiating a consent decree with a third party in a case where the operator, Asarco Inc., had filed a petition in bankruptcy. The consent decree requires the third party to reclaim the mine site to standards and to post a \$4.8 million bond to ensure reclamation of the site.
- Protecting the state’s interest in reclamation of mined land by representing mining agencies in a national, multimillion dollar Asarco, Inc. bankruptcy.
- Participating 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, design, and development leases.
- Assisting the Division of Reclamation, Mining and Safety in several legislative bills concerning prospecting and regulation of uranium mining operations.
- Drafting amicus curiae briefs in the Colorado Supreme Court to protect the Mined Land Reclamation Board’s authority in the regulation of mining operations that use chemicals to process

minerals. The court ultimately ruled in favor of the board.

State and trust lands

During 2008, the section managed public land for the benefit of Colorado residents and wildlife by:

- Facilitating the acquisition by the Division of Wildlife of more than \$27 million dollars in real property interests, both fee title and conservation easements that protect and preserve critical wildlife habitat throughout Colorado.
- Advising the Division of Wildlife in negotiating a memorandum of agreement with the Southern Ute Indian Tribe, whereby tribal members will exercise their off-reservation treaty based hunting rights in a manner compatible with continued public hunting in the same areas of southwestern Colorado.
- Assisting in the development of enabling statutes and the adoption of a regulatory program by the Division of Wildlife and the Division of Parks and Outdoor Recreation to address increasing threats to state wildlife and recreational resources from aquatic nuisance species (ANS). ANS management is becoming an issue of critical national importance as such exotic nonnative species continue to proliferate and the regulatory program adopted by the divisions is being looked at as a model by other states.
- Advising the Division of Parks and Outdoor Recreation as it undertook a major re-structuring of programs, personnel and financing in responding to and complying with an extensive performance audit requested by the Department of Natural Resources.
- Advising the State Board of Land Commissioners on management of the trust assets it holds for the benefit of K-12 education, which over the past year generated roughly \$60 million

dollars of net trust income to support public education in Colorado.

Air, land and water protection

During 2008, the section protected the state's natural resources through active enforcement, including:

- Assisting CDPHE's Air Pollution Control Division and Air Quality Control Commission in preparing and adopting a comprehensive Ozone Action Plan, including a State Implementation Plan revision, to address ozone in the Denver Metropolitan Area and North Front Range.
- Obtaining an injunction for the Air Pollution Control Division against a rental property owner who caused three major asbestos spills in Pueblo residential areas.
- Negotiating a stipulation for the Water Quality Control Division, requiring the installation of comprehensive storm water run-off controls for construction activities on the Roan Plateau that had discharged substantial quantities of sediment into Parachute Creek.
- Bringing air enforcement action against Cemex, Inc. to ensure accurate data collection and reporting, and obtain a civil penalty and supplemental environmental projects that will protect and improve the environment and public health in Boulder County.
- Settling violations of the State's drinking water regulations at a trailer park in Golden that serves mainly low-income citizens. The settlement will bring the facility into full compliance.
- Continuing our involvement in Eleventh Circuit litigation in support of EPA's rule exempting water transfers from Clean Water Act permitting requirements in order to protect Colorado's interests in inter-basin water transfers.
- Settling joint enforcement actions with EPA and DOJ against national home builders and "big box" retailers for stormwater permit violations at construction sites in Colorado, resulting in vastly improved stormwater management at the defendants' sites and civil penalties of over \$200,000 payable to the state.
- Negotiating a settlement requiring Kerr-McGee to install \$12 million in air pollution control equipment upgrades at its oil and gas production facilities in Colorado.
- Working with the Air Pollution Control Division and the Southern Ute Tribe in drafting the Southern Ute's air quality procedural and Title V permitting regulations.
- Negotiating a settlement agreement with an entity operating under a drinking water disinfection waiver to require a reworking of its drinking water system and provide more frequent sampling and other operational changes to ensure continued compliance with drinking water standards.
- Negotiating an Order on Consent that resolved numerous long-standing and on-going water quality violations at the National Hog Farms facility.
- Entering in to a settlement that will bring a Glenwood Springs drinking water facility into compliance with the state's drinking water laws.
- Helping obtain a motion for summary judgment against Adams County, which had sought to block a waste disposal plan supported by CDPHE. Also defended before the state Supreme Court favorable decisions by the District Court and Court of Appeals in a lawsuit by Adams County challenging a state-issued license and permit.
- Negotiating a process to begin closure or alteration of a waste large impoundment at the Cotter Cañon City Uranium Mill.
- Representing the Governor's Energy Office and in support of expanded use of renewable energy and energy conservation as a part of Xcel Energy's electric resource plan, which the PUC approved.

- Advocating to the PUC on behalf of the Air Pollution Control Division in support of Xcel Energy's proposal to retire two coal-fired electric generating plants, which the PUC approved.
- Obtaining a favorable decision from the Colorado Court of Appeals in a challenge to the construction permit for Xcel Energy's Comanche 3 unit in Pueblo.
- Helping promulgate revised state mercury emission standards for coal-fired power plants.
- Working closely with CDPHE to mitigate potential air and water quality impacts regarding commercial oil shale development on Western Slope public lands.

Hazardous and solid waste

During 2008, the section:

- Worked to require better monitoring of waste chemical weapons stored by the Department of Defense at the Pueblo Chemical Depot, and to force final treatment of the waste chemical munitions by 2017.
- Initiated contempt proceedings against defendants who had failed to comply with division and court requirements regarding compliance with Solid Waste Act and Regulations at two of the largest used tire storage facilities in the country. Worked with local officials and the site's new owners to bring the facilities into compliance after nearly a decade of regulatory problems.
- Assisted the client in stakeholder processes and intra-governmental negotiations regarding promulgation of regulations for two types of solid waste facilities: oil and gas exploration, production brine waste impoundments, and composting facilities.
- Convinced the U.S. Department of Defense that its long-standing policy of prohibiting DSMOA funding for sites based certain criteria was legally wrong. This hard-fought change in policy will make federal "formerly used defense

sites" funding available for sites like Fitzsimons Army Medical Center, and others in Colorado and nationwide.

Natural resource damage restoration and land cleanup

During 2008, the section represented the National Resource Trustees in several matters, including:

- Negotiating a \$35 million settlement of the State's claim for natural resource damages at the Rocky Mountain Arsenal.
- Issuing a request for proposals to restore natural resources injured at Rocky Flats. The State Natural Resource Trustees and their federal counterparts will award up to \$4.5 million in natural resource damages to projects that restore, replace or acquire natural resources in the vicinity of Rocky Flats. Projects will be selected in 2009.
- Representing CDPHE to finalize settlements ensuring continued clean-up of the California Gulch Superfund site and restoration or replacement of injured natural resources, despite the bankruptcy of one of the site's largest responsible parties, Asarco. Obtained natural resource damages of \$5.25 million from Newmont Mining, and an uncontested claim for \$5.25 million in the ASARCO bankruptcy that will be used to restore upper Arkansas River habitats and clean up mine waste surrounding the site.
- Establishing a Natural Resource Damages Program to systematically and efficiently identify injuries to natural resources of the State, assess appropriate damages, and restore or replace the resources through fair and cost-effective projects.
- Successfully settling case against Standard Metals Corporation for natural resource damages caused by mining operations near Crested Butte and Silverton.

State Services Section

The State Services Section of the Attorney General’s Office represents the governor, other elected state officials, the administrative parts of the judicial branch, the State Board of Education, more than 20 Colorado-supported universities, colleges and community colleges, the Public Utilities Commission and the Departments of Human Services, Public Health and Environment, Health Care Policy and Financing, Education, Higher Education, Labor and Employment, and Personnel and Administration.

Constitutional cases

During 2008, the State Services section accomplished much in defending Colorado’s state government:

- Defending a challenge to most transfers of funds during the state’s fiscal crisis.
- Defending 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 Court of Appeals in January 2008 and is currently pending before the Colorado Supreme Court.
- Continuing to defend a free speech challenge to the Clean Indoor Air Act by area theatres. The dismissal is currently pending in the Colorado Supreme Court.
- Defending a challenge in the Colorado Court of Appeals to disclosure requirements in ballot measure elections.
- Defending a challenge to the coal severance tax in Denver District Court.

Child Protection, Human Services and Health Care

On behalf of the Department of Human Services, the State Services section initiated actions against more than 38 entities seeking

finances for violations of licensing statutes and regulations and collected more than \$9,500 worth of fines. The section also:

- Represented DHS in an additional 87 cases, including 21 summary suspensions against child-care providers that failed to comply with regulations or operated without a license.
- Represented DHS in roughly 830 child protection cases, resolving most through mediation.
- Handled 29 cases for the Division of Youth Corrections regarding appropriate sentencing or the release of juveniles.
- Recovered more than \$568,000 in Medicaid payments from personal injury settlements and from other liable third parties.
- Advised and represented the Department of Health Care Policy and Financing through its Program Integrity Unit in the recovery of more than \$7.5 million in overpayments in the fiscal year ending June 30, 2008.
- 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.
- Successfully defended against a \$10 million dollar class action challenge to the state disability benefits program which would have required the department to pay for applicants’ attorneys’ fees.
- Successfully defended against an action seeking multi-million dollar changes in the operation of the Colorado Benefits Management System to make it compatible with other computer programs.

Education

Over the course of 2008, 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 5,700 students. Two new schools were authorized to open in the fall of 2008.
- Continued representation of the Colorado Higher Education Insurance Benefits Alliance Trust in advisory and transactional capacities.
- Represented Adams State College, Auraria Higher Education Center, CollegeInvest, College Assist, College In Colorado, Colorado Historical Society, Colorado School of Mines, Fort Lewis College, Mesa State College, Metropolitan State College of Denver and Western State College 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.
- Represented the Capital Construction Assistance Board, a newly constituted board created to administer the Building Excellent Schools Today program, which is authorized to provide up to \$250 million dollars for K-12 school construction and maintenance.
- On behalf of the State Board of Education, prosecuted disciplinary actions against 54 educator license holders and applicants, including 20 disciplinary actions involving charges of sexual offenses or misconduct.
- On behalf of the Auraria Higher Education Center, advised and represented the Center regarding facility use and security issues related to the 2008 Democratic National Convention, including negotiating and drafting license agreements for the use of Auraria campus facilities by the DNC Committee and the City and County of Denver during the DNC.
- On behalf of the Auraria Higher Education Center, advised the Center regarding the purchase and financing of 13.5 acres of real property adjacent to the Auraria campus for the future relocation and expansion of athletic

facilities for the Center’s constituent institutions of higher education.

Workers Compensation

The State Services section opened 105 cases to force employer compliance with mandatory workers' compensation insurance statutes. Section members closed 45 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 district court judgments for more than one million dollars in fines ordered by the Division of Workers' Compensation, and forwarded the judgments to Central Collection Services.

Other legal actions

Attorneys and staff in the State Services section:

- Provided legal guidance to the Public Utilities Commission on gas, water, electric, telephone and transportation matters, including major rate cases and resource planning cases.
- Reviewed and edited or drafted approximately 750 PUC decisions and orders.
- Assisted the PUC in the implementation of House Bill 08-1227 – the PUC’s sunset review legislation. Specific areas addressed in this legislation concern (1) implementation of numerous solar and other renewable energy initiatives, (2) a reduced standard of proof borne by applicants for new taxi service, (3) a lifting of the rate cap on the price of basic local exchange telecommunications service, (4) revisions to the Low-Income Telephone Assistance Program and Low-Income Energy Assistance Program, (5) procedures to permit commissioners to communicate with utility representatives and other interested persons so long as the discussion does not relate to any pending adjudicatory proceeding, and (6) new authority to assess civil

- penalties against non-transportation public utilities.
- Advised the PUC in its consideration of the application by Public Service Company of Colorado for approval of its electric resource plan covering the period 2008 to 2015. In this complex proceeding, issues such as carbon reduction, integration of aggressive levels of wind generation, role of a post-hearing independent evaluator, the interplay between Section 123 (utility scale solar and other new-clean energy and energy-efficient technologies) and Section 124 (wind and solar subject to a cost cap) renewable resources, and transmission planning were addressed for the first time. Additionally, this application was supported by related applications concerning demand side management initiatives, the setting of the renewable energy standard adjustment, additional gas-fired generation at Fort St. Vrain, and the restructuring of interruptible service offerings.
 - Successfully defended the PUC in a court proceeding seeking to obtain reversal of a PUC decision in a Public Service Company of Colorado electric rate case that refused to reconsider the cost of a newly approved coal plant in establishing rates.
 - Successfully defended the jurisdiction of the PUC to issue rules regarding towing services and to issue civil penalties to towing carriers.
 - 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.

Civil Litigation and Employment Law Section

The Colorado Attorney General's Office, through the Civil Litigation and Employment Law Section, defends state agencies and employees sued in state and federal court for personal injuries, property damage, employment discrimination and constitutional violations. 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 Colorado Department of Corrections, the Colorado State Board of Parole, the Division of Risk Management and the employees of those agencies.

The section attorneys provide advice and training to all state agencies in personnel administration and employment issues. The section handled a total of 766 new cases in 2008.

Tort Litigation

The Tort Litigation Unit defended the state in 76 new lawsuits alleging personal and property damage and federal civil rights claims, including seven 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 2008 by this unit were brought against 12 different state agencies and entities.

The unit celebrated the following accomplishments in 2008:

- Won 32 motions to dismiss tort cases.
- Won seven motions for summary judgment.
- Won six cases filed on appeal.

- Settled 30 tort cases favorably for the State.
- Had 13 cases dismissed voluntarily.
- Successfully opposed five petitions for certiorari or mandamus filed in the U.S. Supreme Court.
- Won over \$168,000 in judgments, costs and fees for the state.
- Defended claims cumulatively seeking more than \$8.4 million in damages resulting in payments of less than \$2.5 million, saving the state almost \$6 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.

In 2008, the unit:

- Defended 36 employment cases filed in state and federal district courts, including 15 new cases. The cases involved 236 claims for relief against state agencies and 717 claims for relief against state employees.
- Aggressively sought and obtained early dismissal and summary judgment, obtaining dismissal of 186 claims for relief before any time or money had been spent on discovery.
- Won every appellate issue decided during the year.
- Settled five cases for a total of \$347,235, saving the state more than \$1 million.
- Advised several agencies on FLSA issues, including classification, time-keeping, and calculation of overtime, along with drafting and review of overtime policies.
- Created and presented training to numerous State agencies, including numerous sessions

to CDOT supervisors on general employment issues. The CDOT training will continue in 2009, until we have reached every CDOT supervisor throughout the State.

Personnel, Employment, Civil Rights and Special Funds

The Personnel/Employment/Civil Rights and Special Funds 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 unit represents 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. In addition, the unit provides 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 prosecutes those cases which have been noticed for hearing by the Colorado Civil Rights Commission. The unit also defends the Subsequent Injury Fund 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 accomplished the following in 2008:

- Provided “front-end” employment advice and consultation concerning hiring, discharging and disciplining employees to state agencies.

- Coordinated and presented statewide and agency-specific training seminars directed to state officials and managers to effectively educate, train and manage the workforce.
- Provided advice and representation to CCRD and its director on investigations, hearings, rulemaking and the sunset review process.
- Provided advice and representation to the Special Funds Unit on defense of the SIF and MMIF.
- Defended 273 cases before the State Personnel Board and the Colorado Court of Appeals, including 175 new cases. Won 67 percent of all mandatory hearing cases and got hearings denied on 68 percent of all discretionary hearing cases.
- Handled and prosecuted 27 CCRD/CCRC cases including 17 new cases. Settled 70 percent of all CCRD cases that included training and reporting requirements for respondents.
- Handled five special funds cases including three new cases. Won summary judgment in a case that resulted in respondent being ordered to pay \$48,000 to the fund and halting the Fund’s payment of more than \$250 per week.

Transportation

The Transportation Unit provides 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.

The unit accomplished the following in 2008:

- Represented CDOT in 37 new condemnation, access, relocation, billboard, inverse condemnation, quiet title and other cases.
- Settled or resolved by trial 15 condemnation cases, saving the state approximately \$1.5 million.
- Reviewed 450 contracts for CDOT with an average turnaround time of three days – much shorter than the general turnaround time for attorney review of state contracts.
- Provided legal guidance and assisted CDOT with a Rail Governance Study which evaluated available mechanisms and potential new approaches for promoting passenger rail service in Colorado.
- Obtained a favorable settlement from the Denver Water Department for repair costs incurred by CDOT following the rupture of a Denver Water main and closure of Interstate 25 without resorting to litigation.
- Represented CDOT in several state court actions involving subcontractor disputes with prime contractors on CDOT projects, resolving actions without additional cost to the agency.
- Assisted CDOT with drafting and implementing rules allowing hybrid vehicles to travel in HOV lanes to comply with a legislative mandate.
- Settled several construction contract claims filed by prime contractors following mediation or arbitration. Recovered \$200,000 from engineering design consultants toward payment of a \$1.5 million damage award to a construction company for work on Colorado Highway 24 near Divide.

Corrections

The Corrections Unit defended the State of Colorado in 463 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 1400 claims filed by claimants in the class action ADA lawsuit that was settled, *Montez v. Owens, et. al.* The lawyers also opened 54 major advisory files and 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 unit accomplished the following in 2008:

- Obtained favorable rulings in 277 matters brought by inmates and unfavorable rulings in only 20 matters.
- Settled two cases favorably for the state for a total of \$500 from demands in excess of one million dollars.
- Obtained a published opinion from the Colorado Court of Appeals upholding the DOC's ability to order the inmate to pay \$33,188 in restitution for medical costs incurred for emergency transport and treatment for a drug overdose.
- After legislative sponsors and the Department of Corrections were at loggerheads over House Bill 1382 concerning earned time credits and agency sex offender classification hearings, the unit first assistant negotiated and drafted a compromise amendment that met the approval of the Attorney General, the DOC executive director and the sponsors.
- Drafted an amendment to Senate Bill 112 to delete prisoner suits from expanded religious rights protections under a proposed State version of the Religious Land Use and Institutionalized Persons Act and testified before the Senate State, Veterans and

Military Affairs Committee. The Amendment was approved 5-0 (the overall proposed bill was defeated 3-2).

- Met with 20 prison judges at the State

Judicial Conference in September of 2008 and also conducted due process training with Department of Corrections Hearing Officers and Administrators on two occasions.

Business and Licensing Section

The six 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.

Medical and Ethics Unit

The Medical and Ethics Unit provides legal representation to the state boards within the Department of Regulatory Agencies that regulate physicians, physician assistants, podiatrists, nurses, certified nurse aides and psychiatric technicians. The unit also represents the newly established Independent Ethics Commission that was created as a result of 2006's Amendment 41. The unit supports each represented entity in its mission to protect the public. Legal services provided 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 the work performed this year include:

Board of Medical Examiners: Physicians and Physician Assistants

Counsel for the Board of Medical Examiners successfully prosecuted and resolved several complex disciplinary actions against physicians who engaged in unprofessional conduct. Specifically, counsel for the board prosecuted a summary suspension action against a physician who had sexually assaulted a patient during an examination. During the disciplinary proceeding, and parallel criminal action, three additional patients came forward with similar allegations. The physician permanently surrendered his license to practice medicine in Colorado. Counsel for the board also secured formal disciplinary action against two other physicians, connected with the aforementioned doctor, for their involvement in a conspiracy to dispense and distribute anabolic steroids in Eaton, Colo., and Mobile, Ala.

Board of Nursing: Nurses, Nurse Aides and Psychiatric Technicians

Counsel for the Board of Nursing resolved a large number of cases this year including the successful prosecution of a registered nurse who admitted to using controlled substances while on duty and caring for newborn babies. Counsel also represented the board in a

summary suspension proceeding against a certified nurse aide who had engaged in criminal conduct to include theft and forgery which ultimately resulted in the surrender of her certificate to practice. When this person continued to practice after she relinquished her certificate, counsel successfully enjoined her to ensure that she did not continue to represent herself to the public as a certified nurse aide or otherwise engages in the practice of nursing.

Independent Ethics Commission

Amendment 41, which was passed by the Colorado voters in 2006, established the Independent Ethics Commission to handle complaints, advisory opinions, and letter rulings to help define ethical conduct for government officials and employees. Counsel for the IEC assisted in promulgating procedural rules to ensure that the IEC could function effectively and fairly. Additionally, this year counsel for the IEC intervened in a case filed against Gov. Bill Ritter seeking to have Amendment 41 declared unconstitutional in part on the basis that the gift ban contained in the amendment severely burdens the right to engage in political speech. Counsel also filed an application in district court to preserve the identity of individuals requesting advisory opinions and letter rulings arguing that release of such information would discourage public officials and employees from seeking advice thereby inhibiting the proper functioning of the commission.

Real Estate Unit

Counsel for the Real Estate Division represents the Real Estate Commission, the Board of Real Estate Appraisers, the newly formed Conservation Easement Oversight Commission and the Mortgage Broker Program. Counsel for the division provided legal services to the newly formed Conservation Easement Oversight Commission as it sought public input and began to implement new laws to provide a regulatory structure to prevent abuse in the use of conservation easements. The division's attorneys also provided substantial legal assistance to the Mortgage Broker Program as it adopted approximately 22 new rules and prepared to implement the new mandatory federal law requiring licenses for all loan originators. Additionally, counsel provided assistance to the division in order to protect the Colorado consumer by denying mortgage broker licenses to individuals convicted of crimes involving fraud and theft.

Financial and Health Services Unit

The Financial and Health Services 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 Securities Commissioner, Banking Board, Financial Services Board, the Certified Addiction Counselors Program, Marriage and Family and Family Therapist Board of Examiners, Massage Therapist Program, Psychologist Examiners Board, the Social Work

Examiners Board, the Board of Veterinary Medicine, the Acupuncture Licensure Program, the Respiratory Therapist Licensure Program, the Occupational Therapist Registration Program, the Physical Therapist Licensure Program, the Midwife Registration Program, the Audiology and Hearing Aid Provider Licensure Program, the Board of Chiropractic Examiners, the Board of Optometric Examiners, the Grievance Board (mental health) and the Licensed Professional Counselors Examiners Board. The unit also represents the various commissioners, boards and programs in licensing and other litigation matters.

Division of Securities

Unit attorneys represented the Division of Securities in concluding an injunctive action in the Denver District Court against Life Partners, Inc., Life Partners Holdings, Inc and twelve sales representatives, by obtaining an order of summary judgment finding that the viatical settlement investments offered by defendants are securities, that violations of the Colorado Securities Act as to the sale of unregistered securities and sales by unlicensed sales representatives occurred, and ordering a permanent injunction. After the issuance of the order, the parties stipulated to the facts found in the order, that LPI and LPHI would not appeal the order and would accept a permanent injunction against both entities, and would offer full rescission to Colorado investors. With this action, the Colorado Division of Securities is the first national or state regulator to successfully argue that the

viatical settlement investments offered by Life Partners are securities.

Division of Banking

During 2008, unit attorneys continued to assist in the liquidation proceedings of American International Depository and Trust.

Certified Addiction Counselors Program

Unit attorneys represented the program in an administrative hearing that resulted in a three-year suspension to be followed by probation and practice monitoring of a certified addiction counselor who was found to engage in substandard practice and to have boundary issues where he allowed clients to use his personal vehicle in lieu of paying for counseling, charged excessive fees to Hispanic clients, and used profanity, demonstrated anger, used threatening language and behavior in the course of his practice.

Midwife Registration Program

Unit attorneys represented the program in a contempt matter filed against an unlicensed midwife in Delta County. In that case, an unlicensed/unregistered midwife violated a previous court order prohibiting her from practicing midwifery. Our attorneys assisted in the settlement of the contempt proceeding wherein the defendant agreed to plead no contest to a finding of contempt and stipulate to a new, permanent injunction prohibiting her from being present at any home birthing unless a licensed midwife or physician is present.

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 advise on a wide variety of subject areas including rulemaking, chronic wasting disease, Pet Animal Care Facilities Act enforcement matters, emergency preparedness, 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.

Mined Land Reclamation Board

The unit acts as general and litigation counsel to the Mined Land Reclamation Board, a multi-interest citizen board which establishes the regulations, standards and policies that guide the Division of Reclamation, Mining and Safety. The board implements the Colorado Mined Land Reclamation Act and is actively involved in the decision-making process for controversial permit issuance and enforcement actions. The unit provides legal assistance to the board as required by its various activities which include approving or denying permits and permit modifications when there has been public comment, issuing

violations, setting civil penalties, setting program policy and promulgating rules, and revoking permits and forfeiting bonds

DORA Division of Registration Professional and Technical Licensing Boards

The Unit provides legal representation to a variety of Type 1 and Type 2 boards contained within the Department of Regulatory Agencies. The unit supports each represented entity in its mission to protect the public. Legal services provided include litigation and resolution of licensure, disciplinary, and injunctive matters, as well as advice and guidance with regard to rulemaking and policy issues. Specific boards represented include the Board of Accountancy, the Architects, Engineers and Surveyors Board, the Passenger Tramway Safety Board, the Office of Athlete Agent Registration, the Barbers and Cosmetologists Board, the Electrical Board, the Plumbing Board, the Landscape Architects Board and the Office of Outfitters Registration.

Public Utilities Commission Litigation and Division of Insurance 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 Public Utilities Commission. 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 sewer, and motor carrier utility service is provided to all Coloradans.

The unit's significant cases from 2008 include:

- Representing the Litigation Staff in Public Service Company of Colorado's 2008 natural gas rate case.
- Representing the Litigation Staff in PSCo's 2007-2008 application to increase electricity generation.
- Representing the Litigation Staff in Tri-State Generation and Transmission Association, Inc.'s 2007-2008 application to construct transmission lines along the E-470 corridor in Adams County and Commerce City.
- Representing the Litigation Staff in five cases filed by Black Hills Energy in 2008 including its application for approval of its Energy Resource Plan, its 2009-11 Natural Gas and Electric Demand Side Management Plans, its 2009 Renewable Energy Resource Compliance Plan, and its 2008 natural gas rate case.

Division of Insurance Unit

The unit acts as general and litigation counsel to the various divisions of the Division of Insurance. As part of its service, unit attorneys assist and advise on a wide variety of subject areas in rulemaking related to the regulation of insurance companies and their agents, and provide legal advice regarding changes and amendments to the insurance laws. Litigation is conducted on behalf of the DOI against unauthorized companies and individuals and insurance companies and their agents offering numerous types of insurance including, but not limited to, health care insurance, health

maintenance organizations, long-term care, Medicare supplement insurance, life insurance, property and casualty insurance, and preneed funeral contracts.

One of the unit's bigger cases from 2008 was a settlement was negotiated with Kaiser Permanente of Colorado wherein financial relief in the amount of \$155 million will be returned to customers during the years 2008-2010. Financial relief will be in the form of premium credits or enhanced benefits to employers and individual customers of Colorado Kaiser. A portion of the relief, \$5 million, will also be dedicated to the expansion of its Medical Financial Assistance Fund to support health care needs of lower income Colorado members. Prompting the settlement was that, contrary to Colorado law, Colorado Kaiser had sent million of dollars in profits earned from Colorado Kaiser customers to California Kaiser.

Department of Revenue Unit

The attorneys on the revenue team provide legal services to all of divisions and programs within the Colorado Department of Revenue. This includes taxation divisions (Audit and Compliance, Collections, Fair Share, Taxpayer Services and the Office of the Tax Conferee), the Colorado Limited Gaming Control Commission, the Colorado Motor Vehicle Dealer Board, the Racing Commission, the Liquor Enforcement Division, the Lottery Division, the Division of Motor Vehicles, Administration and the Executive Director's Office. In addition to providing general legal advice to the department and its divisions and serving

as general counsel to boards and commissions, the unit's attorneys represent the department in administrative hearings, in state and federal trial courts, and on appeal before state and federal courts.

This year, attorneys provided regular and varied legal services to the Department of Revenue's taxation divisions. For example, the unit's attorneys handled numerous tax protester suits alleging that Colorado citizens have no obligation to file and pay Colorado income tax. Unit attorneys also provided regular legal advice defending the state's interest in consumer and business bankruptcy cases, representing the Conferee in administrative, trial and appellate proceedings, and advising the Department regarding rulemaking proceedings to implement new corporate tax apportionment provisions. Matters litigated by the unit's attorneys included cases interpreting conservation easement credits, analyzing whether the generation of electricity constitutes the "manufacture" of "tangible personal property," disputing appropriate taxation of the sales of materials used for well fracturing operations in the oil and gas production industry, and defending the agency's methodology for calculating the value of business personal property. Additionally, attorneys successfully defended the department in a case challenging the formula for calculating the coal severance tax. In 2008, after receiving a formal AG opinion concluding that enforcement of the statute would not violate article X, section 20 of the Colorado Constitution, the Taxpayer's Bill of Rights, the Department adopted an amended regulation that resumed enforcement of

the statutory formula. The mining industry sued the Department, claiming a violation of TABOR. On Dec. 17, 2008, the district court ruled in favor of the state on all claims. The case, which will be subject to appeal, raises issues of first impression under TABOR.

In addition to providing legal services to taxation divisions, attorneys in the unit represent several boards, commissions and other regulatory programs, including the Colorado Limited Gaming Control Commission, the Motor Vehicle Dealer Board, the Boxing Commission, the Colorado Racing Commission and the Liquor Enforcement Division. Each regularly assigned lawyer presents cases for the staff before his or her assigned board, commission, program, hearing officer or administrative law judge, and then represents the client on judicial review or appeal. Some of the cases litigated this year included revocation of a liquor license of an establishment that sold alcohol to a minor (who died as a consequence) and suspension of a horse trainer license following charges of forgery. 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. For example, the Gaming Commission's attorneys are assisting with implementation of Amendment 50, which permitted residents of Black Hawk, Cripple Creek and Central City to significantly expand the scope of gaming in their communities.

Attorneys provided frequent legal advice to the Motor Vehicle Division by reviewing rules and records requests, and by representing the Division in

appeals of driver's license revocation cases to the Colorado Court of Appeals and Supreme Court.

The Colorado Board of Dental Examiners and the Colorado Board of Pharmacy

The unit provides legal representation to the Colorado Board of Dental Examiners and the Colorado Board of Pharmacy. Legal services provided include litigation and resolution of licensure, disciplinary, and injunctive matters, as well as advice and guidance with regard to rulemaking and policy issues. Attorneys advised the boards regarding newly adopted statutes and rules, and prosecuted multiple disciplinary and licensure denial actions. For example, Dental Board attorneys successfully resolved a case involving a dentist who, for the second time, practiced dentistry

without a license. Attorneys also handled and resolved several complex substandard care cases, including a case in which a dentist was required to cease endodontic care pending completion of remedial education and a case in which a dentist provided his dental assistant with inappropriate prescriptions for controlled substances. The board's attorneys defended an action before the Court of Appeals (still pending) in which a dentist argued that the board did not have the right to require proof of continued competency when his license had been lapsed for over a decade. The Board of Pharmacy's attorneys provided regular general counsel and litigation services to the board in its efforts to regulate the practice of pharmacy in the state. For example, attorneys resolved complex cases in which pharmacists and pharmacies engaged in internet prescription sales that violated regulatory and public health standards.