

Table of Contents

Office of the Attorney General – 2
 Budget and Legislation – 5
 Consumer Protection – 6
 Criminal Justice – 14
 Appellate Division – 23
 Natural Resources – 25
 State Service – 31
Civil Litigation and Employment Law – 35
 Business and Licensing – 39



Attorney General John W. Suthers



On January 4, 2005, John W. Suthers was appointed as Colorado's 37th Attorney General. In November of 2006, the voters of Colorado elected Attorney General Suthers to serve a full, four-year term. Suthers was re-elected in November 2010 with more than 960,000 votes — more than any other statewide candidate.

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 during 1990 and 1991, president of the Colorado District Attorney's Council during 1994 and 1995, and senior vice president of the Colorado Bar Association in 1996 and 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 more than three decades and have two daughters, Alison, a graduate of Georgetown University Law School and attorney with Holland & Hart in Washington, D.C., and Kate, a Lieutenant J.G. in the United States Navy.

Daniel D. 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, Mr. Domenico was special assistant to the solicitor of the U.S. Department of the Interior. In that role, he advised the secretary and senior management of the department on a wide range of matters relating to National Parks, federal land, water resources, energy production, and other issues important to Coloradans and citizens of the American West.

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

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

Cynthia Coffman

Chief Deputy Attorney General



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

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

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 agency's 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

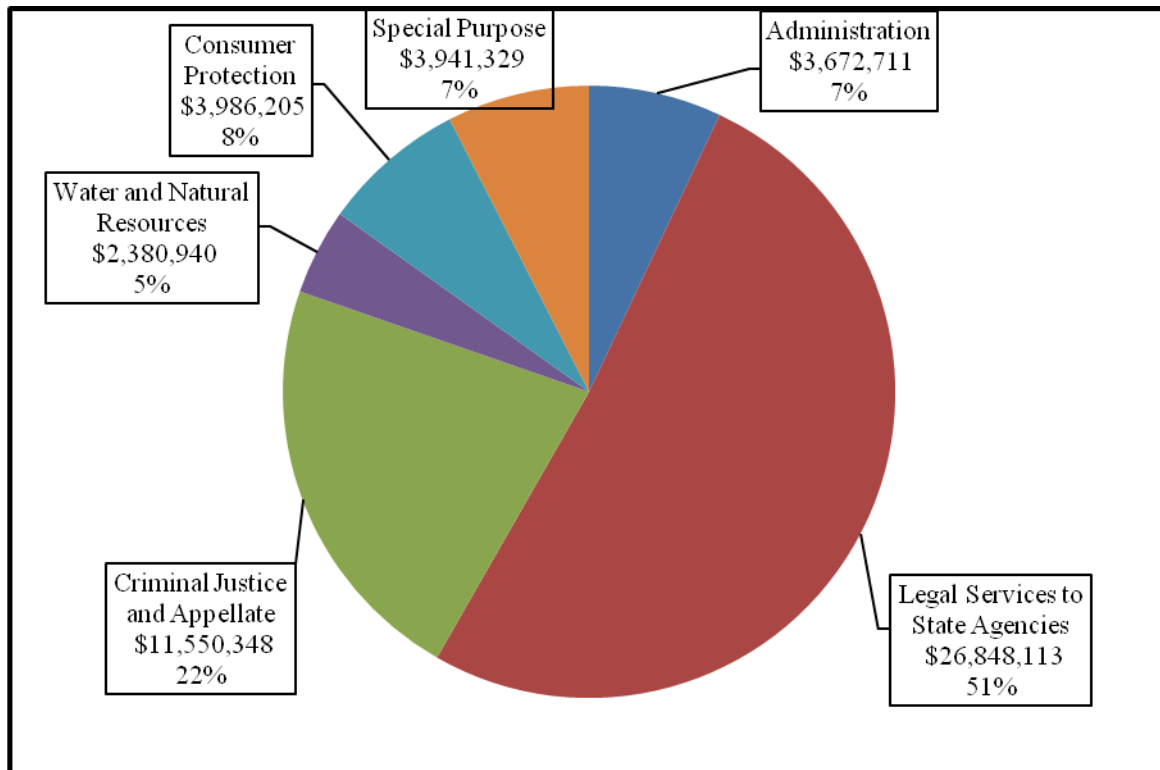


Geoff Blue joined the Attorney General's Office in early 2008 as a senior policy adviser to the Attorney General and the office's liaison to the governor, General Assembly and local governments.

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 budget by the numbers



2010 Legislative Initiatives

The Office of the Attorney General had a great 2010 legislative session with every bill it pushed becoming law. The office's successes ranged from securing better funding for police training initiatives to strengthening the state's consumer protection laws. The bills that became law were:

- **House Bill 1081**, which created a generally applicable felony for money laundering and made it a predicate component of "racketeering" under the Colorado Organized Crime Control Act;
- **House Bill 1277**, which closed a loophole that allowed employees and volunteers at juvenile detention facilities to escape prosecution for engaging in sexual activity with an inmate over the age of 18; and,
- **Senate Bill 27**, which allows the state to fine people who divert groundwater in violation of an order of the state engineer in an amount of up to \$500 per day. (Gov. Bill Ritter signed Senate Bill 27 into law on April 14, 2010.)

The Office of the Attorney General also worked hard to help pass several criminal justice bills:

- **House Bill 1338**, which allows a judge more flexibility in sentencing convicts with two or more felony convictions, provided none of those convictions are for violent crimes;
- **House Bill 1347**, which stiffens the penalties for repeat drunken driving offenders;
- **House Bill 1352**, which lowers the penalties for the simple possession of most controlled substances — with the exception of methamphetamine — and directs most of the cost savings into drug-offender treatment services; and,
- **House Bill 1373**, which creates a statutory distinction between an escapee who walks away from community corrections or other similar programs and the inmate who escapes from a secure Colorado Department of Corrections facility.

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 Attorney General promotes consumer protection through a variety of initiatives and enforcement activities. His consumer protection enforcement activities are handled by four distinct units which he has formed in order to handle the numerous consumer protection laws that have been enacted. The enforcement activities of these units in 2010 are discussed in more detail below.

Consumer Fraud, Antitrust and Tobacco Settlement Enforcement

The Consumer Fraud and the Consumer Protection, Antitrust & Tobacco Units enforce a variety of state and federal consumer protection and antitrust statutes, as well as the terms of the Tobacco Master Settlement Agreement and related statutes. The laws enforced by this unit includes the Colorado No-Call List Act (§ 6-1-901, et seq., C.R.S.), the Colorado Antitrust Act (§ 6-4-101, et seq., C.R.S.), the Foreclosure Protection Act enacted in 2006 (§ 6-1-1101, et seq., CRS) and the mortgage fraud related laws that were enacted in 2007 (§§ 12-61-

905.5 and -911 and § 38-40-105, C.R.S.). Most of the work of this unit in 2010 focused on mortgage fraud and addressing the fallout from the foreclosure crisis. This unit also launched a new educational program to prevent bid rigging on federal, state and local contracts. This unit also continues to enforce the Colorado No-Call Act, the Tobacco Master Settlement Agreement and related tobacco laws.

Loan Modification and Foreclosure Relief Scams

Foreclosures again reached record levels in Colorado in 2010. Scam artists used this unfortunate situation to prey on homeowners who were trying to save their homes. During 2010 the Attorney General took action against companies and individuals who were taking upfront fees, but doing nothing to lower the home owners' mortgage payments or stop their foreclosures.

Examples of these actions include:

- *State, ex rel. Suthers v. American Mortgage Consultants, Oliver Maldonado and Santiago Pineda*
Maldonado claimed to have expertise and success with lenders in negotiating a loan modification. He took upfront fees in the amounts of \$1,500 to \$3,000 from homeowners in foreclosure across the nation. He never reached any success for these borrowers. The Attorney General sued Maldonado and his salesman, Pienda and reached a consent judgment with them on July 26, 2010. The consent judgment bars them from offering any loan modification, mortgage or foreclosure relief serves and requires them to pay \$450,000.
- *State, ex. rel Suthers v. Sherron Lewis*
Lewis convinced homeowners facing foreclosure to pay him several thousand dollars in order to file frivolous motions in

order to challenge their foreclosures. These foreclosure challenges were never successful and the borrower generally ended up losing their homes. The Attorney General filed this action on July 26, 2010. Lewis never appeared and default judgment against him on January 3, 2011 for \$181,244. The judgment also bars him from offering foreclosure relief services.

- *State, ex rel. Suthers v. Jason Lynn and Superior Financial Group and State, ex. rel Suthers v. Patrick Brunner, Jerry Ohu, Greg Hoffman, William Schultz and Platinum Financial Group*

The Attorney General filed actions against these individuals and companies on October 14, 2010 for their part in an equity stripping scheme that resulted in several homeowners losing their homes. These actions are currently pending.

Mortgage Fraud

In 2010, the Attorney General continued to take action against the mortgage brokers and lenders who placed homeowners in risky loans without disclosing the material terms or risks of these loans to the homeowners. As a result of false advertising and deceptive origination practices, homeowners are facing higher interest rates and monthly mortgage payments that are putting them at risk of foreclosure.

Other major 2010 cases include:

- *Wells Fargo Pick-A-Pay Settlement*
In October 2010 the Attorney General reached a settlement with Wells Fargo to provide relief to those borrowers who are in default on option ARM loans that it holds as a result of acquiring Wachovia and World Savings. Wachovia and World Savings originated option ARM loans under the name of “Pick-a-Pay” loans. They failed to disclose several risky features of these loans, such as the fact that the low teaser rate would quickly escalate within one to three months of the loans origination and the negative amortization features of these loans. Under this settlement Wells Fargo agrees to modify these loans to eliminate

these risky features. It also paid Colorado a total of \$1.1 million.

- *State, ex rel. Suthers v. Assurity Financial Services and Calvin and Troy Hamler*
This suit was filed as a result of numerous deceptive mailings that Assurity issued to homeowners nationwide who were looking to refinance. Assurity used several deceptive tactics to get customers to respond to their mailings. One of their tactics was to make the letters look like they were from a government agency offering a rebate. They also issued mailings that appeared to come from the homeowner’s lender, which indicated that the borrower was in default on the loan. The solicitations tried to hide the fact that the solicitation was for a refinancing. The action is currently pending.
- *State, ex rel. Suthers v. Independence Planning, d/b/a Alternative Lending, April Bigler and James Dale*
This action was originally filed in 2009 against a mortgage brokerage firm, its owner and its top producing broker who were putting borrowers in high cost loans without disclosing material risks such as upwardly adjusting interest rates. In 2010 April Bigler and James Dale agreed to settle this action by surrendering their mortgage brokers licenses and paying a total judgment of \$78,655.
- *State, ex rel. Suthers v. Home Mortgage Solutions, Toan (James) Le, An Nguyen and Leonard Smith*

This action was originally filed in 2008 against a mortgage brokerage firm, its owners and manager who were using deceptive mailings featuring a low teaser rates to get customers into option ARM loans. These loans had rapidly escalating interest rates that would increase from 2 percent in the first month to upwards of 8 percent in the second month and each succeeding month. Defendants failed to disclose this escalating interest rate along with other risky features of the option ARM loan to the borrowers. In March 2010, the Attorney General settled with An Nguyen for \$35,000 and the general manager, Leonard Smith, for \$10,000.

Foreclosure Prevention

The Attorney General continued to take a leading role on a national level in combating mortgage fraud. The Attorney General holds leadership positions on two separate taskforces that are designed to enforce laws that will protect fair lending and prevent mortgage scams. The Attorney General is the co-chair of the criminal enforcement working group of the Financial Fraud Enforcement Task Force. He also serves on the executive committee of the recently formed Mortgage Fraud Working Group. The Mortgage Fraud Working Group was formed in October 2010 after allegations came to light that some lenders were rushing loans into foreclosure without following state foreclosure laws.

Also in 2010:

- The Attorney General testified before Financial Crisis Inquiry Commission in January 2010 and provided additional information to the Commission throughout 2010 as part of its investigation into the causes of the financial crisis in 2008. The Commission's final report can be found at www.fcic.gov.
- The Attorney General's Office participated in trainings throughout the year that alerted public trustees and housing counselors to the signs of foreclosure relief fraud and loan modification fraud
- Co-Authored comments with the Illinois Attorney General's Office to Federal Trade Commission in April 2010 regarding proposed rules about loan modification and foreclosure relief firms. These comments were joined by 38 other states. The FTC's rules adopting many of these comments can be found at 75 Fed. Reg. 75092.

Consumer Fraud

Complaint intake volume increased 36 percent comparable to 2009 levels, totaling 6,462 general complaints and 901 mortgage-

specific complaints. In addition to these written complaints, intake received 13,509 phone calls, 1,757 pre-recorded message inquiries and 1,200 pieces of mail from consumers. We designed and implemented an email notification system to keep consumers informed of our active cases and our website summaries of consumer protection cases generates more than 500 clicks each month. Complaints are received by phone, mail, e-mail and through the agency's Web site.

Key Litigation

During 2010, the Consumer Fraud Unit took a series of actions, including:

- *State of Colorado vs. Global Acquisitions*
Unit attorneys filed a complaint against a Greenwood Village firm that deceptively marketed their business brokerage services to small privately owned businesses throughout the United States. Owners Tyrone Tymkovich and Sam Levine and their associates misled business owners to believe that they had a willing and able buyer interested in the purchase of the business at an inflated price. Tymkovich and Levine collected as much as \$10,000 upfront from claiming the money would be used for an certified appraisal of the business necessary to effectuate the sale. The appraisal cost was only \$750 and defendants pocketed the remainder. We obtained a consent judgment for two million dollars along with a contempt judgment against Tymkovich and an injunction preventing the defendants from any further brokering.
- *State v. Immigration Center, et al.*
Immigration Center deceptively marketed itself as affiliated with the federal immigration service. Defendants falsely claimed to be able to provide immigration legal services (without a law license) but actually provide little more than the governmental application forms readily available at the actual USCIS Web site. The court ordered the company to cease operations and to pay \$2.5 million.

Individual owners of the company were also enjoined from further immigration work and were ordered to pay \$85,000.

- *State of Colorado v. Real Talk Network/David Burke*
This nationwide company advertised their debt counseling services in radio infomercials designed to appear as if they were station approved talk shows. In the end, the infomercials were a pitch for consumers to attend a high-pressure sales seminar designed to convince consumers to pay \$2,000 to \$3,500 for their services. The seminars falsely promised services the company did not provide (e.g., no-interest lines of credit; special relationships with banks, etc.) and refused refund requests. We shut this company down through the filing of a temporary restraining order and a litigated hearing involving extensive consumer testimony. The court approved our seizure of more than \$140,000.
- *State of Colorado vs. At The Beach*
The Colorado Attorney General's complaint alleged that At The Beach sales people routinely misled consumers to believe they could cancel their contracts at any time and failed to disclose that cancellation would result in a cancellation fee of \$175 or half of the remainder of the one year contract. The tanning salon company agreed to install recordings equipment in all twenty-four stores so as to prevent commissioned based salespeople from misrepresenting the company's written cancellation policy. The company also agreed to pay an estimated \$200,000 in consumer restitution, along with \$75,000 in fines and \$38,500 to reimburse the state for its investigative costs. As a result of the investigation, At The Beach has already paid more than \$40,000 in restitution.

Uniform Consumer Credit Code & Collection Agency Board

The Consumer Credit Unit enforces eight state credit-related laws – the Uniform Consumer Credit Code (consumer finance) including the Consumer Equity Protection

Act (predatory lending) and the Deferred Deposit Loan Act (payday loans), the Fair Debt Collection Practices Act (collections), the Debt-Management Services Act (debt management/settlement), the Credit Services Organization Act (credit repair), the Rental Purchase Agreement Act (rent-to-own), and as of November 1, 2010 the Refund Anticipation Loans Act. Highlights from 2010 include:

Lending Practice

During 2010, the Unit:

- Supervised 872 licensed lenders consisting of payday lenders (44 percent), mortgage companies (42 percent), finance companies (13 percent), and small installment and other lenders (1 percent). Enforced credit laws against 1,294 companies that pay notification fees, including creditors, rent-to-own companies, and sales finance companies that collect those contracts.
- Conducted 463 compliance examinations of licensed lenders, creditors, and sales finance companies and required them to take corrective action and refund overcharges as appropriate.
- Investigated 531 written consumer complaints against licensed lenders, creditors, sales finance companies, and credit repair companies.
- Required refunds of \$1,639,027 in overcharges to consumers from compliance examinations, investigations, and legal and administrative actions of lenders, creditors, and credit repair companies. Collected \$453,500 in penalties, educational funds and cost reimbursements.
- Investigated or litigated 28 cases against lenders, creditors, and credit repair companies including resolving a lawsuit against a licensed lender that made small installment loans to resolve allegations that it failed to assess consumers' repayment ability, falsified application information, and charged excessive fees. Under a court-approved Consent Agreement, the lender refunded over \$260,000 to consumers, paid \$125,000 in penalties and attorneys fees, and ceased making loans in Colorado.

- Entered into an assurance of discontinuance with a licensed payday lender for collecting loans after its license expired and failing to take required corrective actions. The lender agreed to pay \$250,000 in consumer refunds and penalties.
- Entered into an assurance of discontinuance with an unlicensed internet payday lender for making loans without a license and excess charges. The lender agreed to make consumer refunds of over \$150,000.
- Sued, by raising counterclaims in an Answer defending a lawsuit, two litigation funding companies for making supervised loans without a license, exceeding the Uniform Consumer Credit Code's permitted finance charges, and other violations.
- Obtained a decision from the Colorado Supreme Court involving our ability to investigate unlicensed internet payday lenders that claim to be tribal entities of two Native American Indian tribes. The court remanded the case to the trial court for additional evidence and a determination of whether the tribal entities are "arms of the tribe."
- Continued litigation against a large Colorado credit repair company alleging that its practice of splitting services into separate components violates the Credit Services Organization Act's advance fee ban.
- Sent 10 cease and desist advisory notices to unlicensed payday lenders.
- Adopted rules to implement the new payday lending requirements mandated by House Bill 10-1222. Conducted informal visits to payday lenders to advise them of the new law's requirements.
- Sent advisory notices to refund anticipation loan facilitators about House Bill 10-1400, a new law requiring facilitators to make certain disclosures about tax refund anticipation loans.
- Investigated 72 written complaints against debt-management providers.
- Investigated or litigated 30 cases against debt management companies for excessive fees and unregistered activity.
- Filed three lawsuits against debt settlement companies, including a law firm that allegedly was used in name only to evade the requirements of the debt-management law. Obtained an injunction in one case and resolved part of a second case with a Consent Order for a permanent injunction and restitution of \$150,000 suspended upon payment of \$50,000. The other matters are pending.
- Entered into 27 settlements and obtained refunds of \$225,726 in enrollment fees for Colorado consumers and penalties of \$79,750 from unregistered providers.
- Sent approximately 300 informational letters about the debt-management law to companies based on internet searches and other media advertisements.
- Sent three cease and desist advisory notices to unregistered debt management companies.

Debt Collection

During 2010, the Unit:

- Oversaw the activities of 751 licensed collection agencies.
- Investigated 1,109 written complaints against collection agencies in addition to telephone complaints and inquiries.
- Investigated or litigated 53 cases and obtained \$70,500 in fines.
- Filed lawsuits against and obtained temporary restraining orders against two unlicensed collection agencies. One agency continued to collect debts after it chose not to renew its license. The other agency collected debts after its application for a license was denied. Both matters are pending.
- Obtained a final agency order that a collection agency violated the law for continued communications with a consumer after a request to cease communication. The agency was fined \$4,000.
- Obtained a consent decree in a lawsuit against a collections law firm and its principals that threatened legal action on old

Debt Settlement

During 2010, Unit attorneys and staff members:

- Registered 51 credit counseling and debt settlement companies under the Debt Management Services Act.
- Conducted 15 compliance examinations on registered debt-management providers.

debts beyond the statute of limitations and misrepresented that civil penalties were due prior to obtaining court judgments. The defendants were enjoined from violating the collection laws, banned from collections in Colorado for periods ranging from three years to lifetime bans, agreed to pay \$200,000 to reimburse the state its costs and attorneys fees.

- Filed administrative charges against a collection agency for continued communications after being informed the agency was contacting the wrong person, harassment, and false or misleading representations. The matter is pending.
- Distributed over \$10,000 from a collection agency's surety bond to clients that established that the agency collected amounts due from consumers but failed to remit payments to the clients.
- Issued 57 cease and desist advisory notices to unlicensed collection agencies.
- Adopted rules to implement the statutory in-state office requirements mandated by House Bill 10-1222.

Office of Consumer Counsel

The Office of Consumer Counsel Unit provides legal support and represents the Office of Consumer Counsel. By statutory mandate, the Office of Consumer Counsel 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. On behalf of the Office of Consumer Counsel, the Unit appeared or worked on 76 matters before the Public Utilities Commission, including protests, interventions and rulemaking activities.

In fiscal year 2010, consumers realized savings of approximately \$46.6 million based on the Office of Consumer Counsel's work. Significant cases include:

- Public Service Company of Colorado filed in November 2007 its 2007 Colorado resource plan that identifies future electric generating needs through 2015. In addition, the Public Service Company of Colorado requested that the commission waive its competitive procurement rules to approve the Company's proposal, for carbon reduction purposes, to replace two coal units at its Cameo Station, east of Grand Junction, and two coal units at its Arapahoe Station in Denver with a new 480 mW natural gas combined cycle facility at the Arapahoe Station. The commission issued its Phase I Decision which included the closure of the Cameo and Arapahoe Stations. Phase II Decision by the commission approved the Public Service Company of Colorado's generation resources through 2015. In March 2010 the Office of Consumer Counsel appealed the commission's Phase II Decision to the District Court for the City and County of Denver, which is still pending.
- On September 8, 2008, Qwest Corporation filed an application to set the maximum price for residential basic local exchange service, and for an order from the commission approving its proposed rates and tariffs for residential basic local exchange service, measured service, message service, the tribal lifeline credit and the low income telephone assistance program. After a hearing the commission set a maximum cap of \$16.52 for residential basic local exchange service which will be increased to \$17 one year after the effective date of the order. The Office of Consumer Counsel filed a complaint and writ of certiorari regarding the commission's decision in Denver District Court. On January 6, 2011, Denver District Court Judge Herbert L. Stern, III reversed the commission's decision and remanded it back for further action.
- On May 1, 2009, Public Service filed advice letter No. 1535, which was a Phase I (revenue requirements) and Phase II (rate allocation) electric rate case. The Public Service Company of Colorado proposed an electric revenue requirement increase of approximately \$180 million over the rates

set in its previous electric rate case discussed above. After the Phase I hearing a settlement among various parties, but not including the Office of Consumer Counsel, was reached which included an electric revenue requirement increase of approximately \$136 million. The commission modified the settlement agreement and authorized a revenue increase of approximately \$128 million. Because Comanche 3 would not be in-service until 2010, the commission authorized an increase of approximately \$67 million effective January 1, 2010 with the remaining increase to be effective when Comanche 3 came on line in 2010.

- On August 27, 2009, Qwest filed an application seeking authorization from the commission to “recover actual costs incurred for the relocation of infrastructure or facilities requested by the state or a political subdivision”, pursuant to § 40-3-115, C.R.S. The relocation costs totaled approximately \$4.5 million, of which approximately \$2.6 million was associated with intrastate, regulated services. A settlement in principle was agreed to between Qwest and the commission staff in which the relocation costs were reduced to approximately \$2 million and the intrastate, regulated services to approximately \$1 million. The Office of Consumer Counsel opposed the settlement agreement. On August 12, 2010, the administrative law judge issued his recommended decision in which he did not approve the settlement agreement. The administrative law judge’s recommended decision was upheld by the commission in its December 1, 2010 order.
- On March 10, 2010, Public Service filed an application seeking commission approval of a certificate of public convenience and Necessity for SmartGridCity, a pilot project in Boulder. In Public Service’s last electric rate case the commission allowed Public Service to collect the costs of the SmartGrid City project, approximately \$44.5 million, pending a certificate of public convenience and necessity application. In the certificate of public convenience and necessity proceeding, the Office of Consumer Counsel recommended a spending cap of \$27.5

million. On August 27, 2010 a settlement agreement among Public Service, staff and the Governor’s Energy Office was filed with the commission supporting the \$44.5 million cost recovery. A hearing was held on August 31 through September 3, 2010. The administrative law judge granted on October 27, 2010 the certificate of public convenience and necessity and all of the expenses requested by Public Service as set forth in the settlement agreement. The Office of Consumer Counsel, among other parties, filed on November 16, 2010 exceptions to the administrative law judge’s recommended decision. The commission at its January 5, 2011 deliberations meeting granted Public Service cost recovery of \$27.5 million.

- On May 17, 2010, the commission issued its Order opening a proceeding based on House Bill 10-1365, the Clean Air Clean Jobs Act, which the governor signed into law April 19, 2010. House Bill 10-1365 required all rate-regulated utilities that own or operated coal-fired electric generating facilities in Colorado to submit to the commission, on or before August 15, 2010, an emission reduction plan. Public Service filed its emission reduction plan on August 13, 2010. The commission held a meeting on June 1, 2010 and allowed 40 parties to intervene. Public Service’s initial emission reduction plan preferred plan was rejected by the commission because it did not comply with the Clean Air Clean Jobs Act, which required the emission reduction plan to be fully implemented by December 31, 2017 and required that the Colorado Department of Public Health and Environment approve the emission reduction plan and determine that the emission reduction plan would be compliant with “reasonably foreseeable requirements of the Federal Clean Air Act.” Public Service submitted a new emission reduction plan with additional potential scenarios four days after the start of the hearing. The hearing was held from October 21 to November 2 and November 18 to November 20, 2010. On December 15, 2010, the commission issued its order approving an amended emission reduction plan, which included the following: Arapahoe 3 will be shutdown in

2013, Arapahoe 4 will be fuel switched from coal to natural gas in 2013, Cherokee 1 and 2 will be shutdown in 2011, Cherokee 3 will be shutdown in 2015, Cherokee 4 will be converted from coal to natural gas by the end of 2017, Valmont 5 will be shutdown in 2017, selective catalytic reduction will be

installed on Pawnee in 2014, selective catalytic reduction will be installed on Hayden 1 in 2015, selective catalytic reduction will be installed in 2016 on Hayden 2 in 2016 and a 2x1 combined cycle natural gas facility will be installed at Cherokee in 2015.

Criminal Justice Section

The Criminal Justice Section 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. Section members provide special assistance to district attorneys in complex homicides, cold cases, and gang activity cases and administer the Peace Office Standards and Training Board.

The Criminal Justice Section also coordinates the prosecution of foreign fugitives and represents the Department of Public Safety. The Section also prosecutes white-collar crimes, environmental crimes and multi-jurisdictional matters through direct filings and the use of the Statewide Grand Jury.

Securities Fraud

Pursuant to Colorado statute, the Attorney General has original jurisdiction to prosecute criminal violations relating to securities and securities fraud. The Office of the Attorney General independently investigates and prosecutes allegations of securities violations statewide and in cooperation with the Colorado Division of Securities and other law enforcement agencies. The Unit is made up of two attorneys, two investigators and a paralegal.

The Unit obtained 11 convictions involving securities fraud in 2010. The convictions resulted in restitution orders totaling more than \$7.6 million on behalf of 186 victims. In each of eight plea-bargained cases, the

defendant pleaded guilty to one or more charges of class-three felony securities fraud. Four defendants, three of them first-time criminal offenders, were sentenced to the Colorado Department of Corrections.

In 2010, the Unit opened 10 investigations, five of which were initiated by the Unit's investigators. Five cases were referred to the Unit by the Colorado Division of Securities.

Noteworthy cases include:

- Jason Brooks sold investments in an electronics resale enterprise. He paid early investors with money solicited from later investors, and used investor monies for his personal expenses, including approximately \$1.5 million in gambling losses. Brooks pleaded guilty to four counts of Securities Fraud. A first-time offender, he was sentenced to 32 years in the Department of Corrections, eight years on each count to be served consecutively. He owes more than \$5 million dollars in restitution to 55 victims.
- Kenneth Berry defrauded investors who believed they were investing in state-of-the-art biotechnology software secured by U.S. government contracts. Berry, who used his investors' money to pay his personal expenses, never told investors that he had been previously convicted of multiple fraud and theft-related felonies. Berry pleaded guilty to one count of securities fraud and one count of theft, both class-three felonies. He was sentenced to 20 years in the Department of Corrections — 10 years on each count to be served consecutively — and ordered to pay more than \$116,000 in restitution to five victims.

The Unit tracked restitution payments of 71 defendants during 2010, during which time the Unit collected \$195,076 on behalf of victims.

Medicaid Fraud Control Unit

The Medicaid Fraud Control Unit defends the financial integrity of the state's Medicaid program and the safety of patients in Medicaid-funded facilities. It investigates and prosecutes fraud by providers against the Medicaid program. The Unit also investigates and prosecutes patient abuse, neglect and exploitation in Medicaid-funded facilities and serves as an authority and training resource on abuse investigation and prevention. It also pursues civil recoveries and damages against providers under the Colorado Medicaid False Claims Act, which became law on May 26, 2010.

Colorado paid more than \$4.5 billion to more than 10,000 participating Colorado Medicaid providers (such as nursing homes, physicians, psychologists and mental health therapists, dentists, pharmacies, laboratories, hospitals, clinics and durable medical equipment companies) on behalf of nearly 700,000 citizens who qualified for benefits in 2010. The goal of the Medicaid Fraud Control Unit is to preserve state resources devoted to Colorado's Medicaid program and to protect these funds against fraud.

In 2010, the Medicaid Fraud Control Unit opened 103 new investigations (97 fraud, five abuse, and one financial-exploitation investigation) and eight new criminal cases were filed. Five criminal convictions and 12 civil settlements were obtained, with recoveries totaling more than \$3.9 million. Thirty-nine cases were resolved and closed. The Unit currently has 136 active investigations.

The Unit also works closely with its counterparts in other states and the federal government on a broad range of fraud cases

that span multiple jurisdictions. Several of these cases resulted in regional and national settlements that included activities occurring in Colorado; other cases resulted in federal criminal charges being filed against individuals and corporations. Representatives of the Unit also participate in several working groups of local law enforcement and civilian agencies dedicated to combating health care fraud.

Foreign Prosecutions

The Foreign Prosecutions Unit has saved Colorado millions of dollars in the apprehension, prosecution and incarceration of fugitives tried and sentenced to a Mexican Federal Prison under the Article IV program of the Colorado Attorney General's Office. This Unit's working relationship ensures that fugitives in Mexico are brought to justice, through extradition to the United States or prosecution in Mexico.

This Unit is responsible for the investigation and case preparation of foreign prosecutions cases under the authority of Article IV of the Mexican Federal Penal Code and based on the international treaty with the Mexican Government in providing an alternative to extraditions. The investigator in this Unit works with the respective law enforcement agencies throughout the state when a defendant charged with a serious felony in Colorado has fled to the Republic of Mexico to avoid prosecution in this state. The decision to seek a foreign prosecution rests with the local district attorney of the judicial district in the location of occurrence. The Unit works closely with local prosecutors.

If the local district attorney decides to have the case prosecuted in Mexico, months of case preparation and document translation is

conducted. The case is presented to the Mexican Federal Attorney General's International Affairs Unit in Mexico City. With the case filing, a request and application for a federal arrest warrant is prepared with the Mexican authorities for apprehension of the fugitive.

The investigator in this Unit focuses primarily on homicide cases and currently has eleven open murder cases filed with the Federal Attorney General's Office in the Republic of Mexico. One of the cases, filed in December of 2009 and warrants issued in January of 2010, involved three suspects in a 2006 homicide in Montrose. Two additional homicide cases were in the preparation stages during the course of this year for the Adams County Sheriff's Office and the Thornton Police Department.

Four fugitives responsible for murders in the jurisdictions of Grand Junction in Mesa County; City of Thornton in Adams County, Greeley in Weld County, and the City of Lafayette in Boulder County are currently in custody in Mexico awaiting a court hearing and sentencing.

Several local, state and federal law enforcement agencies and district attorneys' offices call upon the Foreign Prosecutions Unit for assistance in locating perpetrators, victims and witnesses believed to be in Mexico that were involved in Colorado criminal investigations. This Unit has developed strong working relationships and collaboration of criminal justice efforts with all levels of law enforcement and government agencies throughout Mexico

The Foreign Prosecutions Unit investigator has been an integral part of the training of Mexican law enforcement agents and

prosecutors hosted by the Office of the Attorney General and the Conference of Western Attorneys General. This one-week intense training is held annually and focuses on the adversarial judicial system and investigation techniques. In June 2010 this office hosted nearly 70 investigative agents and prosecutors from Mexico with the assistance of the Adams County Sheriff's Office, the Colorado Bureau of Investigation, Adams, Denver and Jefferson county courts. The participants represented nine states from the Republic of Mexico.

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 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 paralegal, is responsible for many of the state's multiple jurisdiction matters, as well as special investigations which may be referred by other state agencies or the governor. Unit attorneys prosecute cases throughout the State of Colorado either under the auspices of the Attorney General or as specially appointed deputy district attorneys in the 22 judicial districts.

In early 2008, Gov. Bill Ritter ordered the Attorney General to take the lead in the re-investigation of the 1987 murder of Peggy Hettrick in Fort Collins. The Unit's first

assistant attorney general and an investigator have been assigned to work with the deputy attorney general for the section as well as with an attorney and an investigator from the Attorney General's Homicide Assistance Team to conduct this investigation. The investigation is currently being presented to the Statewide Grand Jury.

In September 2010, Gov. Bill Ritter also ordered the Attorney General to assume the lead in the prosecution of Myrl Serra, who at the time was the elected District Attorney for the 7th Judicial District on the Western Slope. Gov. John Hickenlooper has reaffirmed the previous order and thus has authorized the Attorney General to proceed with this prosecution. The two pending cases that are attributed this defendant are being prosecuted by the Unit's first assistant attorney general in Montrose District Court.

In May and June 2010, the Special Prosecutions Unit assumed leadership of the District Attorney's Office for the 22nd Judicial District based in Cortez following the death of the elected District Attorney James Wilson.

In 2010, this Unit indicted a group of defendants, led by John Reinholdt II, who used their family's Lafayette based business, the Jaguar Group LLC, to commit a sophisticated multi-million dollar mortgage and bank fraud scheme throughout Colorado and other Western States. The leaders of this scheme were charged under the Colorado Organized Crime Control Act and were successfully prosecuted by the Special Prosecutions Unit in the Denver District Court. John Reinholdt II was ultimately convicted of 32 felony counts by a Denver jury in January 2011 with his sentencing set for March 4, 2011.

High-level cases of multi-jurisdictional fraud involving check fraud, credit card fraud, identity theft and mortgage fraud were another area of emphasis by the Special Prosecutions Unit in 2010. Unit attorneys handling these cases appeared in many jurisdictions including Adams, Boulder and Mesa counties. An example of such a case was six defendant enterprise that committed a sophisticated credit card fraud scheme throughout many states in the West and Midwest of the United States. The Colorado Attorney General, in conjunction with the Colorado Bureau of Investigation, was the only law enforcement agency that aggressively investigated and prosecuted this organization. Five of the six indicted members of the organization have pled guilty to various felony charges. The leader of this organization has pleaded not guilty and is scheduled for trial in May 2011 in Adams County District Court.

The proliferation of narcotics trafficking into Colorado led the Special Prosecutions Unit to initiate three separate large-scale narcotic distribution investigations that resulted in the indictment of 22 defendants in 2010. These cases were then prosecuted by a Unit attorney in Larimer, Jefferson and Adams Counties. Additionally, more than 60 other defendants who were indicted in 2009 as part of two separate narcotics distribution cases had their cases resolved by Unit attorneys in 2010. These case dispositions included sentences to Department of Corrections in excess of 140 years for some of the key leaders of both organizations. Trials are now pending in 2011 for the highest leaders of these narcotics distribution organizations.

During 2010, Unit prosecutors continued its two year focus by identifying and prosecuting instances of multi-jurisdictional charity fraud. An example of such an effort was the Unit's successful prosecution of Mark Shifter in Boulder District Court for his role in deceiving hundreds of citizens into contributing in excess of \$110,000 over a two-and-a-half year time period. The defendant represented that donated money was intended for Russian orphans, Hurricane Katrina victims, to fight juvenile diabetes and for Children's Hospital, when in fact it was misused for his person benefit.

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 10 matters of significant tax fraud were handled by the Unit this year. The completed tax fraud cases as a whole resulted in excess of \$165,000 of restitution being ordered on behalf of the citizens of Colorado. For example, a Unit prosecutor handling some of the state's most complex tax fraud cases was responsible for obtaining the conviction of Jack Thomas, a Black Forest resident and commercial airline pilot, for his role in a tax evasion scheme that resulted in ordered restitution in excess of \$100,000. Twenty-three people were successfully prosecuted for felonies involving unemployment insurance fraud, with more than \$100,000 in restitution being ordered by Courts. Ten filed cases of workers' compensation insurance fraud resulted in convictions and restitution in the amount of \$411,445 being ordered by the courts.

Protecting Colorado's natural resources by enforcing environmental laws is also an important part of this Unit's responsibility. The Environmental Crimes prosecution team

within the Special Prosecutions Unit investigated 14 environmental crimes of significance during the last year with multiple convictions being obtained along with more than \$153,000 in restitution being ordered for the victims. The Attorney General works closely with the U.S. Attorney's Office and both state and federal agencies in pursuing environmental crimes that occur.

Homicide Assistance Team

The Attorney General employs an expert team consisting of two attorneys and an experienced homicide investigator 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 homicide investigation and prosecution.

In 2010, members of this assistance team assisted local prosecutors and investigators in many counties, including but not limited to Adams, Arapahoe, Costilla, Boulder, Douglas, Hinsdale, Montrose and Rio Grande counties. It should be noted that the team's senior attorney spent the majority of 2010 in the San Luis Valley serving as the lead prosecutor for two separate first-degree murder cases in support of the District Attorney for the 12th Judicial District. The Unit attorneys and its investigator are also responsible for the conducting of a variety of invaluable trainings for this state's prosecutors and investigators on the topic of complex homicide prosecutions.

Insurance Fraud Unit

The Insurance Fraud Unit is part of the Financial Fraud Unit within the Criminal

Justice Section of the office. The Unit investigates and prosecutes criminal offenses relating to insurance fraud. Typical cases involve theft and forgeries. The Unit consists of two attorneys, four investigators, one paralegal, and one administrative assistant.

During 2010, the Unit processed 974 referrals of potential criminal cases related to insurance fraud. Most of these referrals came from the Colorado Division of Insurance. Other sources of referrals were law enforcement agencies and the National Insurance Crime Bureau. The number of referrals from the Division of Insurance increased by 54 percent in 2010, up from 527 in 2009, 337 in 2008 and 272 in 2007.

In 2010, the Unit opened 39 new investigations. The Unit filed a total of 28 new cases in Adams, Arapahoe, Denver, Jefferson and Montrose counties. Nineteen of these cases were initiated by indictments issued by the Colorado Statewide Grand Jury; the other nine were direct filed by complaint and information.

During 2010, one case went to trial, 11 cases were resolved through plea negotiations and one case was dismissed by this office.

Noteworthy cases include:

- The one trial was held in Grand Junction and involved Camden Fortney, owner of Camden Motors in Grand Junction, who paid bribes to Terry Robinson, an independent adjuster for Colorado Casualty, and to Cathy Cross, an employee of Colorado Casualty. Fortney paid the bribes to encourage Robinson and Cross to make salvage vehicles available for him to purchase without salvage titles. A vehicle is considered “salvage” when the cost to repair the vehicle exceeds its value. These vehicles are deemed to be unsafe to operate. The

vehicles may be rebuilt and, if they pass inspection, they may be safely operated, but their value is significantly less than a non-rebuilt vehicle. Generally, financing and insurance cannot be obtained for rebuilt vehicles. The benefit to Fortney of buying salvage vehicles without salvage titles is that he could rebuild and sell the vehicles at a much greater profit than if they had been properly titled. Victims at trial testified that they had no idea how unsafe their vehicles were to drive. For this reason, it trial was filled with emotion. The jury convicted the defendant of 16 counts of commercial bribery, three counts of theft, and two counts of conspiracy. He was sentenced to 53 years in the Department of Corrections and a restitution order of \$584,488.

- In May of 2010, the Unit indicted 12 individuals for their involvement in a staged/fictitious auto accident ring. Eight of the defendants were charged with violation of the Colorado’s Organized Crime Control Act, a class-two felony. Most of these individuals were involved (some for at least a decade) in purchasing salvaged cars which were then allegedly repaired by a company that one of the defendants owned and then titled in a another name so they could create or claim damage from staged accidents in order to defraud insurance companies into paying false damages. Many of the cars were used in several staged accidents, but they were always re-titled and insured with a different company for subsequent fraudulent claims. More than 150 accidents were investigated; the Statewide Grand Jury indicted this group for more than 30 fraudulent accidents which often involved more than one false claim per accident. More than 20 insurance companies were defrauded by this group. They are all current pending cases in Arapahoe District Court. Several of the defendants have fled to Lebanon and Saudi Arabia.

During 2010, the Unit supervised the restitution payments of 54 defendants on probation for insurance fraud-related crimes. \$151,501 in restitution was collected from January through mid-December 2010.

Additionally, the Unit achieved new restitution orders totaling \$733,149 and cost and fine orders totaling \$16,144.

Auto Theft

In April of 2010, the Attorney General's Office added an Automobile Theft Unit to the Criminal Justice Section through a grant from the Colorado Automobile Theft Prevention Authority. The Auto Theft Initiative consists of a full-time prosecutor and investigator who assist local law enforcement agencies and district attorneys in the investigation of complex crime related to automobile theft through use of the Statewide Grand Jury. The initiative also provides field-specific training to law enforcement agencies across the state.

In 2010, the Auto Theft Initiative:

- Opened two grand jury investigations involving complex multi-jurisdictional criminal activity;
- Provided training to automobile theft investigators at the annual Colorado Auto Theft Investigators conference
- Reviewed or consulted on approximately 12 separate investigations at various levels in 2010.

Of the two grand jury investigations started in 2010, one remains open and the other resulted in the indictment of four individuals who had used an elaborate car theft and Vehicle Identification Number swapping scheme to steal and then resell automobiles for approximately six years. The case is currently pending in Arapahoe County District Court.

DNA Justice Review Project

In 2010, the Attorney General's Office received nearly \$1.2 million dollars in

federal grant funds to start a program that is reviewing criminal convictions in sexual assault, manslaughter, and murder cases to identify where postconviction DNA testing could possibly exonerate an innocent inmate.

The review process involves the following:

- Review up to 5,000 past rapes, murders and manslaughters to identify cases where postconviction DNA testing could possibly exonerate an innocent inmate;
- Test biological evidence in roughly 1 percent of the cases where DNA evidence could exonerate innocent inmates;
- Request further judicial review in any case where the postconviction DNA analysis proves a conviction is questionable;
- Document cases that result in exoneration; and,
- Close cases where postconviction DNA analysis indicates the conviction was accurate.

The Office of the Attorney General also plans to use the program's findings to help law enforcement change its investigative techniques to reduce or eliminate future wrongful convictions. The findings also could form the basis for future legislation aimed at improving Colorado DNA collection, retention and testing procedures. The Office of the Attorney General is administering the program with the Denver District Attorney's Office.

Peace Officer Standards and Training Board

The Colorado Peace Officer Standards and Training Board manages the training and certification of approximately 15,000 active and reserve peace officers who are appointed to Colorado Law Enforcement agencies in addition to managing the 26 certified police academies in Colorado and

approximately \$1.8 million dollars in training grants. The POST Board consists of seven employees, 58 subject matter experts and 20 appointed board members. In 2010, the POST Board appointed a 13-member task force to revise the DNA online training into a more effective format.

Over the past year, POST launched a series of new programs and initiatives designed to bring the best training to the peace officers of Colorado. Upon completion of an organizational assessment, the POST Board reorganized with a focus on a customer-based approach. By restructuring the training grant formula, POST became more responsive to statewide needs.

POST developed a new more efficient testing model using command officers from the Colorado State Patrol and entered into a grant-funded Tolerance Training Partnership with the Museum for Tolerance in Los Angeles, Calif.

POST continues to work closely with the rural districts of Colorado. POST developed a Rural Management Training Program, an Internet-training program for the 50 smallest law enforcement agencies. POST also entered into a training partnership with the Law Enforcement Innovation Center at the University of Tennessee to bring training to Colorado.

The POST Board completed the initial work on creating an East Slope refresher academy. POST also engaged in a training partnership with the International Association of Chiefs of Police to bring their Leading by Legacy training program to Colorado. A Detention Academy that would travel the state training rural jail staffs is being developed and the initial work on a

four-agency online statewide training program has been completed.

POST is in the process of developing a suicide-prevention program designed for peace officers (initial work completed in 2010 with training to start in 2011).

In 2010:

- POST Coordinated the 26 approved academies operating in Colorado. These academies conducted 35 basic academy classes and three reserve academy classes.
- POST completed 13 academies and program inspections.
- More than 700 students took POST exams. Of this group, 635 passed on the first attempt, 20 passed on the second attempt, five passed on the third attempt and one failed all three attempts. The remaining 44 did not retest.
- The El Paso County Sheriff's Office's 2010 academy had the highest academy average score, a rating of 92.5 percent.
- The 2010 statewide average exam score, based on 611 total academy students, was 85.7 percent.

During 2010, POST also:

- Granted \$1,822,707 to 10 training regions and six training providers;
- Coordinated 187,648 hours of training to 12,852 peace officers;
- Approved 140 new training courses; and,
- Attended 22 outreach meetings.

Department of Public Safety

The Department of Public Safety is the principle state law enforcement agency providing a leadership role in policy development and implementation of a wide range of criminal justice issues through its divisions (the Colorado Bureau of Investigation, the Colorado State Patrol, the Division of Criminal Justice, Fire Safety and Homeland Security), and approximately 50

boards and commissions. Examples of the wide range of the Department of Public Safety responsibilities include statewide crime scene investigations, laboratory analyses and testimony in criminal cases; fire code inspections and certifications; immigration enforcement on state highways; leadership of statewide commissions and multi-jurisdictional taskforces; statewide grant awards to law enforcement agencies; and the development of standards for the treatment of convicted offenders.

This Unit represents the Department of Public Safety in all civil, non-monetary litigation and provides legal advice on a wide range of issues including policy development, personnel matters, rule making, policies and procedures of boards and commissions, asset forfeitures, open records requests and subpoenas, and representation of Department of Public Safety issues in criminal prosecutions.

This Unit consists of one attorney, who also serves as counsel to the Peace Officers Standards and Training Board.

In 2010, the Unit:

- Successfully defended a constitutional challenge to portions of the Automobile Theft Law before the Colorado Court of Appeals (*Metal Management v. State of Colorado, et al.*, 09CA0798). The case involved members of a multi-agency auto theft task force from the Colorado State Patrol, El Paso County Sheriff's Department, and the Colorado Springs Police Department.
- Defended the Executive Director of Public Safety in a federal 2nd Amendment lawsuit challenging the statutory residency requirement for obtaining controlled carry permits. Concurrent with dismissal of the Executive Director as a named party, the Attorney General intervened to defend the constitutionality of the statute. (*Peterson v. Al LaCabe, et al*, 10-CV-59-WDM-MEH)
- Participated in the Court of Appeals' Courts in the CommUnity program in a case selected by the Court. The program, at Highlands Ranch Mountain Vista high school, included Q&A from approximately 200 students following oral argument.
- Continued to represent Public Safety on a wide variety of issues litigated throughout Colorado in federal and state civil and criminal courts, administrative bodies, and in U.S. Bankruptcy court.

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 sealing-of-records cases and 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 2010, the Attorney General's Appellate Division had 28 full-time attorneys supported by three staff members to respond to defense appeals of these felony convictions. The division's caseload is both 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 defendants 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 Colorado 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 district attorneys through weekly case law updates, informal advice, and formal presentations at Colorado District Attorneys Council meetings and training sessions.

2010 Caseload

The Appellate Division opened 1,057 new appellate cases in 2010. Division attorneys successfully upheld criminal convictions and/or sentences in 91.1 percent of their cases. These cases involved the following convictions:

- 547 assaults or sexual assaults against children
- 432 burglaries and thefts
- 356 kidnappings and assaults
- 218 drug offenses
- 304 homicides
- 219 aggravated robberies
- 119 sexual assaults on adults
- 984 other offenses (primarily felonies)

In managing the appellate caseload, 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 1019 opening briefs, answer briefs, and answers to orders to show cause.
- *Oral Arguments*
Appeared at 91 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 40 petitions for rehearing to correct matters that were wrongly decided by the courts.
- *Petitions for Certiorari*
Asked the State Supreme Court to conduct further review in 21 cases that would otherwise have an adverse impact on law enforcement.

Natural Resources Section

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

Federal and Interstate Water

The Natural Resources Section protects Colorado's interests in its interstate rivers.

In 2010, attorneys:

- Assisted the State Engineer's Office in a continuing series of public meetings to draft and achieve consensus on Rules in Water Division No. 3 to protect senior surface water rights and Colorado's compact obligation while reducing groundwater withdrawals as little as possible.
- Provided legal advice to the Department of Natural Resources in negotiating various agreements regarding the Blue River Decree.
- Settled all objections to promulgated rules addressing the effect of increased irrigation efficiencies on the State's ability to meet its compact obligations under the Arkansas

River Compact resulting in the Court decreeing the rules as promulgated.

- Represented the State Engineer and defended his decision to approve Subdistrict No. 1 in Water Division 3 in a 10-day trial.
- 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 reoperations Endangered Species Act review and National Environmental Policy Act processes on behalf of the state.

Water Resources and Conservation

In 2010, attorneys:

- Assisted the State Engineer's Office in drafting legislation to assist with administration of more than 40,000 oil and gas wells. Represented staff of the State Engineer's Office in a three-week hearing to adopt rules governing oil and gas well administration.
- Represented the State Engineer in hundreds of water rights proceedings in Colorado's water courts, including several appeals to the Colorado Supreme Court.
- Obtained a Colorado Supreme Court reversal of an adverse water court ruling, with the Supreme Court agreeing with the State Engineer and the Colorado Water Conservation Board that a water court's retained jurisdiction over water augmentation plans may be invoked to prevent threatened as well as actual injury to vested water rights.
- As a result of the foregoing Supreme Court decision, obtained a settlement on behalf of the State Engineer and the Colorado Water Conservation Board in a long-standing dispute with the Upper Eagle Regional Water Authority over proper replacement of

the Authority's out-of-priority depletions to the Eagle River.

- Secured an important precedent for thousands of wells in Water Division 3, with a Colorado Supreme Court decision affirming the State Engineer's position that the use of water rights for such wells is limited to the locations of use contemplated at the time of the appropriations and not at the time of the adjudications of such rights.
- In an 11-day trial, defeated what the Division 1 water court found to be a "dangerous" and unsupported claim for nontributary ground water related to water discharging from an old mine portal in Park County in a case which may, pending any appeal, set important precedents for nontributary water claims under current statutory standards.
- Obtained a decision from the water court for Water Division 6 affirming the State Engineer's position that a municipal entity could not perfect a conditional water right until its absolute water rights approved for the same purpose had been fully exhausted, and participated in oral argument before the Colorado Supreme Court in the appeal of this decision.
- Participated in what has been billed as the "historic" Farmers Reservoir and Irrigation Company case in Water Division 1, in which the water court set forth a new standard for the change of water storage rights. The appeal of this case is pending before Colorado Supreme Court.
- 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, 4, 5, 6 and 7.
- Provided representation for more than 220 cases for the board.
- Successfully prosecuted enforcement actions against illegal water diverters in all seven water divisions to protect vested water rights

holders from injury caused by illegal diversions. In one such enforcement action, successfully argued that defendant's contempt of court for failure to pay penalties and costs totaling more than \$128,000 in an enforcement action warranted imposition six-month jail sentence.

- Assisted the Tort Litigation Unit in defeating takings claims brought against the State Engineer as a result of his curtailment actions against entities pumping ground water without an augmentation plan to prevent injury to vested water rights.
- Assisted the Colorado Water Conservation Board in conducting hearings on weather modifications in three counties.
- Assisted the Colorado Water Conservation Board in a contentious and complicated revision of the regulations involving construction and development in the floodplains and flood prevention and damage reduction.
- Undertook several rulemakings for the Colorado Ground Water Commission. Successfully defended on appeal Ground Water Management District rules imposing further restrictions on wells already permitted by the State Engineer.
- Assisted the Colorado Water Conservation Board in drafting loan provisions for loans to water users and providers in excess of \$25 million.
- Continued to assist the Colorado Water Conservation Board in the Chatfield Reallocation Project, a \$125 million water storage project designed to increase water availability in the South Platte River Basin. Worked with the Division of Parks and Outdoor Recreation to identify their concerns with the reallocation based on their dual role as project participant and the operator of Chatfield State Park.

State Trust Lands

In 2010, attorneys:

- Advised and assisted the State Board of Land Commissioners on general management of the trust assets it holds, primarily for the benefit of K-12 education,

which are projected to generate more than \$79 million of net trust income this year.

- Advised and assisted the State Board of Land Commissioners with transactions involving more than 88,000 acres and more than \$23 million. The SLB holds nearly 3 million acres of land in fee title and approximately 4 million acres of mineral interest, which generates significant demand for transactional legal services and the resolution of disputes on the transactions.
- Assisted the State Board of Land Commissioners to resolve significant outstanding disputes related to the Hesperus Trust, which supports Ft. Lewis College.
- Advised and assisted the State Board of Land Commissioners to develop a revised and updated oil and gas lease form.
- Advised and assisted the State Board of Land Commissioners to create authority to conduct direct transactions with local governments through House Bill 10-1165.
- Increased legal assistance provided to the State Board of Land Commissioners for operational matters including the development of a strategic plan and the selection of a new division director.

State Wildlife and Park Lands

In 2010, attorneys:

- Advised on and facilitated in the acquisition by the Division of Wildlife of more than \$20 million dollars in real property interests, both fee title and conservation easements, that protect and preserve critical wildlife habitat throughout Colorado. Acquisitions were funded by federal fish and wildlife aid, state hunting and fishing license fee revenues and moneys provided by the Great Outdoor Colorado Trust Fund.
- Advised and assisted the Division of Wildlife in responding to the threats posed to state wildlife resources from oil and gas development on state and federal lands within Colorado that also provide critical wildlife habitat for game and threatened and endangered species, including the development of cooperative agreements with oil and gas companies and best management practices that otherwise assist the companies

in avoiding or minimizing impacts to state wildlife resources. Such agreements are of particular importance in split-estate situations where the Division of Wildlife owns fee title to the property, but not the right to develop those mineral.

- Advised and assisted the Division of Wildlife in the development and implementation of a major initiative to update regulations regarding the possession and rehabilitation of wildlife by private parties licensed by the Division of Wildlife.
- Advised and assisted the Division of Wildlife in the development and implementation of fish and wildlife mitigations plans required of applicants for water storage projects in Colorado, including the Southern Delivery System in the Arkansas River basin, the Windy Gap and Moffat Tunnel firming projects in the Colorado River basin, and the Chatfield Reservoir reallocation of storage in the South Platte basin.
- In an appeal of a district court action, defended the Division of Wildlife's interest in maintaining public hunting access to public and private lands located near or adjacent to areas being developed for large lot or ranchette home sites. Through court action some residents of these areas sought to close neighboring private and public lands to hunting despite the absence of any discernable threat to public safety generally or to the residents specifically from such hunting activity. The Court of Appeals upheld the district court's dismissal and the Colorado Supreme Court denied the plaintiff's petition for a writ of certiorari.
- Advised and assisted the Division of Wildlife and the Division of Parks and Outdoor Recreation with proposals to modify management of both Bonny Lake State Park and the South Republican State Wildlife Area to address decreasing water levels in Bonny Reservoir due to compliance issues with the Republican River Compact. The right to use Bonny Reservoir for recreational purposes, which was a key feature to both the operation of the state park and wildlife area, was purchased with federal recreation funds and any change in management requires the approval of the

National Park Service, the implementing agency for the federal funding program.

- Advised and assisted the Division of Parks and Outdoor Recreation in the development and implementation of the regulatory program addressing off-highway vehicle use in Colorado, including clarification of the off-highway vehicle use grant program administered by the Division of Parks and Outdoor Recreation to better address issues raised by some constituent groups regarding law enforcement and off-highway vehicle use trail restoration. The clarifications regarding the off-highway vehicle use grant program are currently the subject of a judicial review action by other competing constituent groups.
- Advised and assisted the Division of Parks and Outdoor Recreation with regard to its participation in the reallocation of water storage space in Chatfield Reservoir. The Division of Parks and Outdoor Recreation seeks the right to use some of the additional storage space in Chatfield Reservoir for general park purposes, but because it also operates Chatfield State Park must balance the impacts associated with such a reallocation, including the relocation of a number of park facilities, on its overall park operations.
- Advised and assisted the Division of Parks and Outdoor Recreation as it continues to implement significant budget cuts related to the recent economic downturn that has required some significant reductions in parks services and partial closure of some state parks. The Division of Parks and Outdoor Recreation no longer receives any general fund support for its operations and has had to increase park entrance and activity fees in order to try to offset the loss of such financial support.
- Advised and assisted the Division of Parks and Outdoor Recreation on responding to requests to develop mineral resources underlying some state parks that are owned by the Division and in responding to the threats posed to state parks from development of mineral resources owned by third parties directly adjacent to and in some cases underlying existing state parks.

Air, Land and Water Quality

In 2010, attorneys:

- Assisted the Colorado Department of Public Health and Environment in promulgating its Regional Haze State Implementation Plan, which aims to protect and improve the air quality and scenic vistas in the state's national parks, monuments and wilderness.
- Represented the Air Pollution Control Division and the Governor's Energy Office in administrative actions before the Public Utilities Commission, implementing the recently adopted Clean Air-Clean Jobs Act.
- Negotiated a compliance order on consent for violations of air quality permits by an asphalt production company.
- Assisted the Air Pollution Control Division in developing an analysis regarding potential aggregation of sources for air permitting purposes. The state's analysis responded to an EPA objection concerning a state permit for a natural gas compressor station.
- Assisted the Air Pollution Control Division in resolving asbestos violations involving the demolition of structures at two locations in the Denver Metro Area.
- Helped the Air Pollution Control Division resolve violations associated with a major asbestos spill resulting from a fire at a residence.
- Collected attorney fees for the enforcement of injunctions addressing major asbestos spills caused during unlawful buildings demolition in Pueblo.
- Assisted the Colorado Department of Public Health and Environment in promulgating the state's counterpart to EPA's tailoring rule for greenhouse gas emissions.
- Successfully defended several water quality stormwater enforcement actions in administrative and civil litigation.
- Resolved an enforcement action against a produced water disposal facility for permitting violations, securing production and operations records through subpoena.
- Resolved an enforcement action and obtained penalties against a wastewater treatment facility involving 26 spills.
- Assisted the Colorado Department of Public Health and Environment in its promulgation

of water quality financial assurance regulations for Housed Commercial Swine Feeding Operations.

- Assisted the Water Quality Control Division in addressing discharges of uranium and radium from the closed Schwartzwalder uranium mine.
- Settled violations of Colorado’s drinking water regulations at several drinking water facilities throughout the state. The settlements will bring the facilities into full compliance.
- Resolved appeals of drinking water waiver withdrawals, bringing these facilities into compliance with the state’s drinking water disinfection requirements.
- Worked with the Water Quality Control Division to develop a new policy regarding Whole Effluent Toxicity, and negotiated with stakeholders and EPA to resolve any concerns regarding the policy.
- Used judgment liens against a public water supply system owner/operator to gain compliance with the state’s primary drinking water regulations, following lengthy administrative and civil enforcement actions for multiple violations.
- Successfully defended an administrative appeal of the Water Quality Control Division’s certification of Colorado Springs Utilities’ Southern Delivery System water supply project under § 401 of the Clean Water Act. The project is intended to serve Colorado Springs’ growing population through additional water storage in Pueblo Reservoir that will be conveyed via pipeline to Colorado Springs. The Division’s certification includes numerous conditions to ensure protection of water quality in the Fountain Creek and Arkansas River Basins.
- Continued our involvement in 11th 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 interbasin water transfers.
- Negotiated a settlement with a major coalbed methane gas company for various construction stormwater violations in Las Animas and Moffat Counties. The agreement included injunctive relief and a large civil penalty, mainly satisfied

through the company’s donation of funds to the impacted counties for energy public building efficiency projects.

- Assisted the Colorado Department of Public Health and Environment in issuing the first conventional uranium mill license in the United States in 25 years.
- Worked with the Governor’s Energy Office to successfully negotiate a Memorandum of Understanding with the Federal Energy Regulatory Commission that streamlines permits for small hydroelectric projects.
- Represented the Governor’s Energy Office in proceedings before the Public Utilities Commission to approve a major transmission line out of the San Luis Valley that will facilitate development of renewable energy generation in the valley.
- Represented the Governor’s Energy Office in negotiations with the Department of Education to adopt rules that will facilitate low interest loans to schools to install renewable energy systems.

Hazardous and Solid Waste

In 2010, attorneys:

- Continued resolution of several lawsuits by and against Adams County regarding Radioactive Materials License and Hazardous Waste Permit associated with the Clean Harbors Deer Trail Disposal Facility.
- Participated in shareholder meetings to address statewide concerns regarding remediation of contaminated dry-cleaning facilities. This was integrated with guidance for determining when groundwater remediation and monitoring may be terminated.
- Counseled Petroleum Storage Tank Fund Committee on contingent fee legal services agreement to investigate and prosecute claims of double dipping to the state fund.
- Obtained search warrant and counseled the Colorado Department of Public Health and Environment throughout enforcement of both solid and hazardous waste actions eliminating improper transportation and disposal of plating bath wastes to an illegal waste impoundment in El Paso County adjacent to a municipal water supply well;

enforcement resulted in removal and proper disposal of more than 22,000 gallons of illegally disposed waste, an ongoing cleanup that will protect the water district customers, and two penalty assessments surpassing six figures.

- Continued to assist the Colorado Department of Public Health and Environment in drafting regulations on liquid waste impoundments. This ongoing stakeholder process, involves diverse industry sectors and all three of the Colorado Department of Public Health and Environment environmental divisions. Rulemaking is tentatively set for mid 2011.
- Assisted the Colorado Department of Public Health and Environment draft regulations concerning waste tire hauling and disposal. These regulations will go to rulemaking in February 2011.
- Obtained a \$90,000 civil penalty against a property owner in Conejos County who illegally burned and disposed of commercial solid waste while operating a guest resort.
- Improved long term protectiveness of environmental remediation projects in the state by counseling and training the Colorado Department of Public Health and Environment to effectively implement Colorado's unique institutional controls statute.

Natural Resource Damages, Land Cleanup and Restoration

In 2010, attorneys:

- Finalized settlement for injuries to groundwater at the Lowry Landfill Superfund Site with the City of Denver, Waste Management, and twelve entities that arranged for disposal at the site. Obtained approximately \$1.5 million to provide for groundwater protection and improvement projects for Platte River basin groundwater.
- Identified several possible new natural resource sites damaged by pollution, including one under the Oil Pollution Act and Clean Water Act, instead of CERCLA.
- Participated with federal agencies in pursuing insurers of the Standard Metals Company for natural resource damages caused by mining operations near Crested Butte and Silverton. Colorado's portion of recoveries totals \$237,000 to date.
- Represented the Colorado Natural Resource Trustees in their administration of \$27.4 million in Rocky Mountain Arsenal natural resource damage funds. This ongoing process has involved working with community groups and local governments to come up with matching funds and projects that will restore, replace or acquire the equivalent of the natural resources injured at the Rocky Mountain Arsenal. Additionally, this fall, we finalized a conservation easement to protect 100 acres north of the Arsenal from development while allowing creation of a 100-year detention basin and enhancing native species and habitat.
- Worked with Federal trustees to begin restoration projects for the Lake County California Gulch Superfund site. Completed work on Tiger Mine to eliminate acid drainage from mine workings. Began work on stream restoration, fencing to protect stream areas, land acquisitions, noxious weed control, irrigated pasture revegetation and wetland enhancement.
- Counseled and coordinated cost effective implementation of CERCLA remedial action between the Colorado Department of Public Health and Environment and the Colorado Department Transportation, saving taxpayers hundreds of thousands of dollars on mine waste water treatment plant.
- Worked with State Trustee representatives to administer the \$1.5 million natural resource damage settlement at the Shattuck superfund site in Denver. Began meetings with community members and plan to have an advisory committee established by the end of February 2011.

State Services Section

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

Constitutional cases

During 2010, the attorneys from the State Services Section:

- Continued to defend the state in an open records lawsuit concerning the governor's personal cell phone records.
- Continued to defend a major constitutional challenge to Colorado's system of financing K-12 education.
- Continued to defend a Taxpayer's Bill of Rights challenge to the coal severance tax formula in the Colorado Supreme Court.
- Continued to defend a Taxpayer's Bill of Rights challenge to the method by which the state funds the Taxpayer's Bill of Rights reserve.
- Successfully defended a challenge to the Colorado's voter registration requirements.

Human Services

During 2010, attorneys:

- Collected nearly \$3,700 in fines.
- Represented the Department of Human Services in 39 child care licensing cases, including 17 summary suspensions of licenses where providers presented a threat to the health and safety of children.
- Represented the Department of Human Services in 934 child protection cases, resolving most through mediation.

- Represented the Department of Human Services in 1,022 child abuse and neglect administrative appeals.
- Defended the Department of Human Services Office of Appeals in 11 actions for judicial review filed in district court.
- Represented various divisions of the Department of Human Services regarding subpoenas for records.
- Represented the Department of Human Services Division of Youth Corrections in 27 district court cases regarding the appropriate sentencing, placement or release of juveniles.
- Represented the Department of Human Services Division of Behavioral Health, in four cases involving the licensing of treatment providers.
- Represented the Department of Human Services Division of Vocational Rehabilitation in 11 administrative appeals regarding the provision of vocational rehabilitation services or business enterprise program vendors.
- Provided legal advice or assistance to more than seven different divisions within the agency on at least 18 different issues, including contract reviews.
- Successfully defended the Department of Human Services in a \$10 million class-action challenge to the state disability benefits program.

Health Care

During 2010, attorneys:

- Assisted the Department of Health Care Policy and Finance in recovering Medicaid overpayments through settlement negotiations and litigation.
- Assisted the Department of Health Care Policy and Financing in recovering funds from liable third parties in personal injury actions.
- Continued to defend a federal lawsuit against the Department of Health Care Policy and Financing challenging the validity of a Colorado law that allows the

department to recover millions of dollars each year from liable third parties in personal injury actions.

- Advised and represented the Department of Health Care Policy and Finance in the termination of several Medicaid providers suspected of fraud.
- Successfully defended the Department of Health Care Policy and Finance in numerous trust and probate matters including disputes over sheltering income and assets in trusts.
- Represented the Colorado Department of Public Health and Environment in numerous medical marijuana related matters, including defending against several subpoenas to produce confidential information.
- Successfully defended the Colorado Department of Public Health and Environment in administrative hearings challenging the imposition of fines and sanctions assessed on assisted living facilities where patients' safety and well-being was at risk.
- Continued to defend against an action regarding the operation of the Colorado Benefits Management System and timely delivery of benefits to recipients.
- Collected roughly \$140,000 from hospital audit appeals.
- Won a favorable decision from administrative decision on an issue raised involving transfer coding. This victory has led to additional settlements of hospital audit appeals involving the transfer issue and preliminary agreements for payment totaling \$211,000.
- Continued to pursue an appeal at the Departmental Appeal Board of a \$3.3 million disallowance in FFP.
- Successfully defended the Department of Health Care Policy and Financing in a challenge to a rate reduction in the CDASS program implemented under the governor's executive orders.

Education

During 2010, attorneys:

- Continued representing the Charter School Institute. Attorneys also reviewed three new applications, resulting in the approval of two

new schools. Monitored the process of selecting a new executive director for the Institute, the renewal of charters for four existing schools, and successfully defended an appeal to the State Board of Education of the non-renewal of one existing low-performing school.

- Continued to represent the Colorado Higher Education Insurance Benefits Alliance Trust in advisory and transactional capacities.
- Continued to represent the state's public institutions of higher education 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.
- Continued to assist the state's public institutions of higher education with governance matters, open records and open meetings issues, policy development, faculty dismissal hearings, personnel issues, litigation and general legal advice.
- Continued to represent the Capital Construction Assistance Board, a board created to administer the Building Excellent Schools Today program, which has provided \$389.6 million for K-12 school construction and maintenance since its inception.
- Prosecuted disciplinary actions on behalf of the State Board of Education against educator license holders and applicants who violated statutory requirements, including disciplinary actions involving charges of sexual offenses or misconduct and theft.
- Advised the State Board of Education on charter school appeals.
- Advised the Department of Education on issues regarding federal regulatory compliance and federal audits.
- Advised the Department of Higher Education on the closing of three diploma mills, on student complaints against private colleges and on recovering funds owed to the state.

Labor and the Department of Personnel and Administration

During 2010, the State Services Section opened 74 cases to force employer compliance with

mandatory workers' compensation insurance statutes. Section attorneys closed 88 cases, either by settlement, the employer's payment of fines, sending the fines to collection, or by the employer obtaining insurance or closing the business. Of these cases, the section initiated four cease and desist cases and independent-contractor cases, collected \$22,750 in settlements and fines, and sent \$743,500 in fines to collection.

In 2010, attorneys also:

- Opened 54 cases, filed 49 briefs, and participated in 10 oral arguments in appeals on behalf of the Industrial Claims Appeals Office.
- Opened 36 cases and closed 36 cases in petroleum storage tank clean up reimbursement protests.
- Handled 33 subpoenas for the Division of Workers' Compensation and Unemployment Insurance.
- Completed 38 rule opinions for the Division of Labor and Employment and the Department of Personnel and Administration.
- Handled two subpoena enforcement cases.

Public Utilities Commission

The attorneys from State Services section:

- Defended the Public Utilities Commission in 11 court matters.
- Drafted or reviewed and edited approximately 700 Public Utilities Commission decisions and orders.
- Advised the Public Utilities Commission on issues concerning due process, ethical standards of conduct, the reasonable foreseeability of various environmental regulations, and cost recovery in conjunction with the implementation of the Clean Air Clean Jobs Act, including the review and approval, as modified, of the emission reduction plans presented by Public Service Company and Black Hills.
- Successfully defended the Public Utilities Commission's right to assert the deliberative process privilege in the context of an open records law suit concerning emails by non-

elected officials related to the drafting of legislation.

- Successfully obtained a denial of a motion for preliminary injunction in a state court matter seeking to have the Chairman of the Public Utilities Commission disqualified as a result of his e-mail communications external to government officials related to the drafting of legislation.
- Continue to defend the Public Utilities Commission in state court against a claim that emails between its commissioners concerning draft legislation violated the Colorado's open meetings law and are not protected by deliberative process privilege.
- Advised the Public Utilities Commission on various new taxicab applications, which are premised on a statutory presumption of public need for additional taxicab companies in metro areas.
- Continue to defend the Public Utilities Commission before the 10th Circuit Court of Appeals concerning the Federal Communication Commission's definition of a telephone business line used in determining the level of competition in a wire center and, ultimately, the wholesale price for network elements sold to facilities-based competitive local exchange carriers.
- Advised the Public Utilities Commission on how to lawfully spread its approved \$128.3 million rate increase among its customer classes, including the adoption of seasonally differentiated rates. Convincingly recommended the Public Utilities Commission to reject Public Service Company's proposal to use its tariffs to avoid environmental liability.
- Advised the Public Utilities Commission in its consideration of amendments to Public Service Company's electric resource plan covering 2008 to 2015 and continuing to defend the Public Utilities Commission in state court against challenges to the adopted plan.
- Continue to defend the Public Utilities Commission against a broad challenge that it abused its power in approving an increased price cap for Qwest Corporation's basic local exchange service offering.
- Continue to advise the Public Utilities Commission regarding proposed

transmission line construction project extending from San Luis Valley to Pueblo which line would. Support renewable electricity generation.

- Advised the Public Utilities Commission on a rulemaking intended to redesign of the Colorado High Cost Support Mechanism by

which telecommunications carriers obtain financial support to provide service in high cost, rural areas of the state.

- Advised the Public Utilities Commission in its approval of the merger between Qwest Communications International, Inc. and CenturyLink, Inc.

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 and brings administrative cases against private parties on behalf of the Colorado Civil Rights Commission.

Additionally, 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 on a myriad of employment and general liability issues.

Attorneys from the Section handled more than 740 new cases and reviewed more than 600 contracts in 2010.

Corrections

The Corrections Unit defends inmate lawsuits involving various issues, including constitutional rights, time computation, prison discipline proceedings, *habeas corpus* petitions, parole and contract-related matters. Unit lawyers also handle compliance issues and claims filed by inmates in the class action ADA lawsuit, *Montez v. Ritter, et. al.* The lawyers also provide 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.

In 2010, the Unit:

- Opened 402 new cases.
- Obtained favorable rulings in 213 matters brought by inmates or their attorneys and unfavorable rulings in only three cases (success rate of 98.6 percent).
- Obtained favorable rulings from appellate courts in 53 of 56 rulings (94.6 percent).
- Obtained favorable federal jury verdicts in the one case that went to trial.
- Obtained favorable rulings in all three hearings held in state court.
- Settled four cases for \$87,000 from demands of \$1,872,000.
- Obtained a published opinion from the U.S. 10th Circuit Court of Appeals in five consolidated cases. The court held that the statute of limitations runs two years from the time that a reasonable person would have discovered his or her injury rather than two years from completion of the grievance process.

Employment Tort Litigation

The Employment Tort Unit defends state agencies and employees in state and federal employment litigation. The cases involve claims arising under a myriad of federal and state statutes, including Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the Equal Pay Act, the Age Discrimination in Employment Act, the state Whistleblower Act, and other state and federal employment laws. The Unit attorneys also provide advice

and training to state agencies regarding employment law issues.

In 2010, the unit:

- Defended 37 employment cases filed in state and federal courts, including 17 new cases. The cases involved 174 claims for relief against state agencies, and 295 claims for relief against state employees.
- Aggressively sought and obtained early dismissal and summary judgment of 272 claims — 205 of those claims were dismissed before any time or money had been spent on discovery.
- Won the only appellate case of the Unit's that was decided during 2010
- Settled two cases for a total of \$123,000, saving the state more than \$477,000.
- Advised several agencies on FLSA issues, including classification, timekeeping and calculation of overtime.
- Created and presented training to numerous state agencies and to higher education institutions on the Americans with Disabilities Act and the Family Medical Leave Act.
- Provided day-to-day advice to state agencies and higher education institutions, including handling performance issues for non-classified employees, responding to EEOC Charges, mediating with the EEOC, responding to Colorado Open Records Act requests and reviewing proposed agency policies.

Personnel, Employment, Civil Rights and Special Funds

The Personnel, Employment, Civil Rights and Special Funds Unit helps state government manage classified employees and defends the state and its employees in employment disputes. The Unit represents all agencies in personnel hearings and matters before the State Personnel Board and on appeal. The Unit provides advice and training to state agencies and employees regarding personnel matters.

The Unit also provides legal advice to the Colorado Civil Rights Division within the Department of Regulatory Agencies in conjunction with the Colorado Civil Rights Division'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.

In 2010, the Unit:

- Provided daily front-end employment advice and consultation to state agencies concerning hiring, discharging and disciplining employees.
- Coordinated and presented statewide and agency-specific training seminars directed to state officials and managers to effectively educate, train and manage the workforce.
- Provided civil rights advice to the Colorado Civil Rights Division and represented the Division at Colorado Civil Rights Commission meetings.
- Defended 207 cases before the State Personnel Board and the Colorado Court of Appeals, including 188 new cases. Won 89 percent of all mandatory hearing cases and obtained denials of hearings in 80 percent of all discretionary hearing cases.
- Won a published decision from the Colorado Court of Appeals establishing when a temporary employee is considered a classified state employee.
- Prosecuted 14 cases that were noticed for hearing by the Colorado Civil Rights Commission at the Office of Administrative Courts or in state district court. Negotiated more than \$60,000 in settlement payments to private citizens and mandatory discrimination training for private employers. Received judgments in two fair housing, predatory lending cases for

\$40,000 and \$629,203.

- Defended ten Special Funds Unit cases before the Office of Administrative Courts, including seven new cases. Negotiated more than \$100,000 in reimbursements to the Special Funds Unit.

Tort Litigation

The Tort Litigation Unit defends the state of Colorado, its agencies, employees, entities and officials in lawsuits seeking damages for personal injury and property damage, as well as those brought pursuant to federal law, often claiming civil rights violations. The unit also provides day-to-day advice to agencies, including Risk Management, on questions of liability, coverage, indemnity, settlements and applicability of the Colorado Governmental Immunity Act.

In 2010, the Unit:

- Opened 93 new cases, including two cases from the Corrections Unit, and opened five attorneys fees claims associated with 42 U.S.C. Section 1983 cases seeking injunctive relief.
- Convinced nine plaintiffs to dismiss their complaints prior to motions to dismiss.
- Won 41 cases on motions to dismiss.
- Won six cases on motions for summary judgment.
- Settled 16 damages cases for a total of \$789,912. Plaintiffs in these cases had sought damages totaling \$3,582,011.
- Defeated one application for attorneys fees of \$175,000 and settled one attorneys fees claim for \$35,000 on a demand for \$37,500.
- Prevailed in two appeals, and filed an amicus curiae brief in the Colorado Supreme Court in an appeal between third parties.
- Opposed certiorari in two cases in the U.S. Supreme Court and in one case in the Colorado Supreme Court. The courts denied certiorari in each case.
- Conducted one jury trial in a wrongful death case and won it on a motion for a directed verdict.

Transportation

The Transportation Unit advises the Colorado Department of Transportation on a multitude of legal issues. The Unit prosecutes all condemnation actions, defends inverse condemnation actions and handles administrative actions. The Unit also handles issues involving access control, highway beautification, billboard location and Procurement Code protests. The Unit advises the Colorado Department of Transportation in construction matters and represents the Colorado Department of Transportation in construction arbitration and litigation.

The Unit also provides advice regarding environmental and real estate issues and defends and negotiates settlements in these areas. Members of the Unit review, revise and approve all Colorado Department of Transportation contracts and assist in rulemaking and approval of regulations. The attorneys also review proposed legislation affecting the Colorado Department of Transportation.

In 2010, the Unit:

- Represented the Colorado Department of Transportation in 58 condemnation, access, relocation, billboard, inverse condemnation, quiet title and other cases.
- Settled or resolved by trial 12 condemnation cases, saving the state \$1.25 million.
- Reviewed more than 600 contracts for the Colorado Department of Transportation, with an average turnaround time of three days.
- Provided legal guidance related to the implementation of two new enterprises created by the FASTER legislation, Senate Bill 09-108. The Colorado Bridge Enterprise and High Performance Transportation Enterprise began actively pursuing their business goals in 2010.

- Assisted in hiring bond counsel, disclosure counsel and investment bankers, and participated as part of a finance team, which issued \$300 million in Colorado Bridge Enterprise revenue bonds. The bonds will accelerate the repair and reconstruction of 128 structurally deficient bridges in Colorado.
- Assisted with implementing the Bridge Enterprise program goals.
- Provided representation of the High Performance Transportation Enterprise in its efforts to obtain a federal TIFIA loan to accelerate expansion of U.S. Highway 36 (Denver to Boulder) and other innovative processes for improving surface transportation.
- Represented the Colorado Department of Transportation in several state court cases involving subcontractor disputes with prime contractors, resolving matters without additional cost to the State.
- Represented the Colorado Department of Transportation in construction disputes and claims by prime contractors seeking additional compensation for highway and bridge projects. Resolved 13 disputes, saving the State more than \$3,676,804.
- Negotiated and drafted contracts, grants and related agreements with the Regional Transportation District, the City and County of Denver and other parties to implement redevelopment of Denver Union Station, the FASTRACKS program and other significant transportation improvement projects.
- Advised the Colorado Aeronautical Board, including preparing governance documents the State Audit and reviewing Federal Aviation Grants to address an audit.
- Advised the CDOT Equal Employment Opportunity and Disadvantaged Business Office with regard to civil rights issues and helped finalize a disparity study to be used with CDOT's federally-mandated affirmative action program.

Business and Licensing Section

The seven 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, the State Personnel Board and the Independent Ethics Commission.

Real Estate Division

The attorney unit representing the Division of Real Estate works to protect Colorado consumers from incompetent or deceptive brokers, appraisers and mortgage loan originators. Counsel for the Real Estate Division represents the Real Estate Commission, the Board of Real Estate Appraisers, the Conservation Easement Oversight Commission and the recently formed Mortgage Loan Originator Board.

In 2009, the Unit:

- Obtained a temporary restraining order and thereafter a court order against an unlicensed individual and a limited liability company that collected thousands of dollars of rent on behalf of landlords but did not remit those funds to the landlords.
- Provided general counsel advice to the new Mortgage Loan Originator Board and aided the board transition this program from a director to a board-model program.
- Negotiated a stipulation with a licensee who unlawfully retained earnest money deposits from his clients. The stipulation resulted in revocation of the broker's license and a \$10,000 fine.
- Aided the division obtain license revocations from individuals with criminal

felony convictions that impaired their ability to serve the public.

- Provided general counsel advice to the commission and the division regarding consultation with the Department of Revenue with respect to conservation easement tax credit matters.
- Obtained a permanent injunction against an individual and a company that were practicing without valid licenses.

Revenue Unit

Unit attorneys provide legal services to divisions and programs within the Colorado Department of Revenue. The Colorado Department of Revenue includes several divisions devoted to determining, enforcing and collecting state and local tax; the division of motor vehicles; and several regulatory boards, commissions and programs. Attorneys in the Revenue Unit also provide legal representation to the Property Tax Division within the Colorado Department of Local Affairs.

During 2010, Unit attorneys represented the Department of Revenue's taxation divisions in administrative hearings, in state and federal trial courts, and on appeal before state and federal courts. Many of these cases involved millions of dollars in contested state funds and complex constitutional, statutory and regulatory legal issues. Attorneys defended the Department of Revenue in a tax-related lawsuit in federal court challenging House Bill 10-1193, which established reporting requirements for retailers that do not collect Colorado sales or use tax. Attorneys worked with the agency to reach a settlement in a long-standing case related to taxation of tobacco products.

Attorneys continued to defend the Department of Revenue’s implementation of the coal severance tax in Colorado’s appellate courts. Unit attorneys are pursuing an appeal of a ruling in a case that will determine whether the generation of electricity constitutes the “manufacture” of “tangible personal property.” Attorneys also defended the state’s interest in several bankruptcy and collections cases, and in taxation cases that are still in the administrative stage of the legal proceedings. This year, new attorneys were added to the Unit for the purpose of advising the Department of Revenue and litigating cases related to denied conservation easement tax credits.

Attorneys in the Unit also represent the Department of Revenue’s enforcement divisions and its several boards, commissions and regulatory programs. These include the Colorado Limited Gaming Control Commission, the Motor Vehicle Dealer Board, the Colorado Racing Commission and the Liquor Enforcement Division. Each regularly assigned lawyer provides general counsel advice to the programs, litigates cases at the administrative level and represents the client on judicial review or appeal. This year, the Unit began providing regular representation and legal advice to the Medical Marijuana Enforcement Division, which the legislature charged with implementing the newly-enacted Colorado Medical Marijuana Code.

Attorneys provided frequent legal advice to the Department of Revenue’s Division of Motor Vehicle 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 the Colorado Supreme Court.

Attorneys in the Revenue Unit also provide legal representation to the Property Tax Division within the Colorado Department of Local Affairs. The Property Tax Division coordinates and administers the implementation of property tax law throughout 64 counties in Colorado. Attorneys representing the division provide statutory interpretation and other general counsel services as needed and represent the Administrator in administrative hearings and negotiations before the Board of Assessment Appeals. Property Tax Division attorneys have been litigating an important valuation case involving Southwest Airlines, expected to be heard in Denver District Court. Additionally, this year, several important cases were litigated on behalf of the Division in Colorado’s appellate courts.

Medical Unit

The Medical Unit provides legal representation to the state boards within the Department of Regulatory Agencies that regulate physicians, physician assistants, podiatrists and pharmacists. The Unit supports each represented entity in its mission to protect public health, safety and welfare. Legal services provided include litigation and resolution of licensure, disciplinary and injunctive matters. Unit attorneys also provide legal advice and guidance on rulemaking and policy issues.

Board of Medical Examiners

Counsel for the Medical Board successfully prosecuted and resolved several complex

disciplinary actions against physicians who engaged in unprofessional conduct. Counsel for the board also litigated on behalf of the board in state court, as well as providing guidance and rulemaking advice, confirming and clarifying the board's statutory authority. Specifically, as a result of an amicus brief filed by counsel for the board last year in private party litigation, the Colorado Supreme Court recognized that documents from a board investigation are not subject to automatic disclosure under civil procedure rules; rather, a trial court should include as a factor for consideration the policy reasons for confidentiality of a board investigation, including open communication and the board's encouragement for self-assessment, when determining whether to order a physician to disclose documents connected with a board investigation in private-party litigation.

Following directly on the heels of this Colorado Supreme Court decision, counsel for the board provided legal guidance to the board in the course of effectuating significant amendments to the Medical Practice Act as a result of a statutorily required sunset review. The review of the Colorado Medical Practice Act resulted in significant amendments providing, for example, that records related to a complaint filed with the board will not be subject to a subpoena or discovery in any civil suit brought against a physician who is the subject of such records. This limitation on record use encourages the open and candid flow of information between board and physician in order to ensure that the health, safety and welfare of the public are best protected. Additionally, counsel for the board provided advice and guidance under a comprehensive update of all board rules,

such update being necessary as a result of the sunset review-related legislative changes.

Further, counsel for the board successfully obtained several relinquishments or deactivations of licenses this year. Counsel obtained relinquishment of the license of a physician accused of providing narcotic drugs to patients in exchange for sex. Counsel secured the relinquishment or permanent inactivation of the licenses of three physicians who could not safely practice medicine based on a physical or mental disability. Counsel negotiated the relinquishment of a license from another physician who pleaded guilty to criminal charges and was registered as a sex offender. Additionally, counsel for the board obtained a one-year license suspension and indefinite practice restriction on a physician's practice of "end of life care" following a lethal dose of morphine resulting in the death of a patient.

Board of Pharmacy

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, the board's counsel defended the basis for denying a license application, the denial resulting from criminal convictions related to unauthorized taking of medication from a pharmacy. This matter is ongoing.

Nursing and Dental Unit

The Nursing and Dental Unit provides legal representation to the state boards that

regulate nurses, certified nurse aides, psychiatric technicians, nursing home administrators, the Nurse Physician Advisory Task Force for Colorado Health Care and dentists. The Unit also represents the newly created Surgical Assistants and Surgical Technologists Program that was created by statute in 2010. The Unit supports each represented entity in its mission to protect public health, safety and welfare. Legal services provided include litigation and resolution of licensure, disciplinary, and injunctive matters, as well as general counsel representation at board meetings, advice and guidance with regard to compliance with the state's open meetings law, rulemaking and policy issues.

Board of Nursing

Counsel for the Board of Nursing resolved a large number of cases this year including the successful prosecution of a registered nurse who diverted narcotics by calling in falsified prescriptions for homebound, hospice patients and diverting the narcotics to her own use. This nurse was convicted on four felony counts of identity theft for the same conduct, which ultimately resulted in the revocation of her nursing license. Counsel successfully resolved a case involving a registered nurse who was convicted on felony charges of menacing and first degree burglary based on conduct in his facility in which he brandished a gun and menaced other employees. Counsel negotiated a permanent relinquishment in a CNA case in which the CNA plead guilty to misdemeanor sexual contact with an at risk adult based on events that occurred at the assisted living facility in which he worked. Each of these cases was reported by the media during the past year. Counsel represented the board in

multiple summary suspension proceedings involving nurses who diverted narcotics for their own personal use from hospitals or other medical facilities. Counsel moved swiftly in all of these cases and successfully removed these nurses from practice.

Board of Examiners of Nursing Home Administrators

Counsel for the board provided general counsel representation at board meetings and advice and guidance with regard to compliance with the state's open meetings law. Counsel also provided legal representation regarding disciplinary matters as needed.

The Nurse Physician Advisory Committee Task Force is an advisory committee comprised of physicians and nurses, representatives of their professional organizations and communities who are tasked with providing consensus recommendations to the executive director of the department of regulatory agencies, the Colorado medical board or the board of nursing on a number of issues. Counsel for the Nurse Physician Advisory Committee Task Force provided general counsel representation at task force meetings, advice and guidance on a variety of issues including compliance with the state's open meetings law, and issues related to by-laws and policies for this unique task force.

The Colorado Board of Dental Examiners

Counsel for the board successfully resolved or initiated litigation in a number of complex cases. Counsel negotiated a

stipulated relinquishment related to a licensee who pleaded guilty to felony conspiracy to obtain controlled substances by fraud. Counsel also negotiated a stipulated resolution of a case involving allegations of violations of the practice act including infection control issues, allegations of improper Medicaid billing and documentation errors.

The Dental Board legal team successfully litigated an injunctive action for the unlicensed practice of dentistry. The Dental Board legal team achieved additional efficiencies in meeting the client's goals of public protection by successfully mediating multiple cases. The attorneys worked closely with the board in promulgating a new anesthesia rule that ensures public protection and safe dental practice.

Health Services Unit

The unit provides general counsel and litigation representation to the various health related regulatory programs including:

- Certified Addiction Counselors Program
- Marriage and Family Therapist
- Board of Examiners
- Massage Therapist Program
- Psychologist Examiners Board
- The Social Work Examiners Board
- The Board of Veterinary Medicine
- The Board of Chiropractic Examiners
- The Board of Optometric Examiners
- The Grievance Board
- The Licensed Professional Counselors Examiners Board

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 cases include:

- *Wang Kho*
After a hearing before the Office of Administrative Courts, unit attorneys obtained a revocation of Mr. Kho's massage therapist registration. Mr. Kho was alleged to have sexually assaulted a client during a massage session in Breckenridge. The Administrative Law Judge found that Mr. Kho's conduct was in violation of the Massage Therapy Practice Act and that the evidence supported revocation.
- *Board of Social Work Examiners v. Neil Feinberg*
Unit attorneys obtained a permanent injunction against Mr. Feinberg after the board learned that he was still engaging in the practice of psychotherapy without a license. Mr. Feinberg had previously relinquished his license after allegations concerning Reactive Attachment Disorder. Mr. Feinberg separated the children from their families, placing them with a stranger for the duration of the intensive therapy during which, two young children were subjected to such so-called therapies as "holding therapy" (restrained in a prone position on a couch while Feinberg belittled and shouted at them); "strong sitting" (sitting with legs and arms crossed without speaking for extended periods of time); and "rage reduction therapy" (being screamed at by Feinberg in an attempt to induce rage).

Division of Registrations Professional and Technical Licensing Boards

The Unit provides legal representation to a variety of Type 1 boards and Type 2 licensing programs 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.

The Type 1 boards represented include the Board of Accountancy, the Board of Architects, Engineers and Surveyors, the Electrical Board, the Board of Landscape Architects, the Passenger Tramway Safety Board and the Examining Board of Plumbers.

The Type 2 programs represented include: the Office of Acupuncture Licensure, the Office of Audiology and Hearing Aid Provider Licensure, the Office of Athlete Agent Registration, the Office of Athletic Trainer Registration, the Office of Barber and Cosmetology Licensure, the Office of Funeral Home and Crematory Registration, the Office of Midwifery Registration, the Office of Physical Therapy Licensure, the Office of Occupational Therapist Registration, the Office of Outfitters Registration and the Office of Respiratory Therapy Licensure.

In 2010, the Unit:

- Defended an appeal by an outfitter who took a client to an area closed to hunting, allowed him to take a bighorn sheep ram and then tried to conceal the violation by lying to law enforcement officers. The court found in favor of the Office of Outfitter's Registration and recommended revocation of the outfitter's registration. The outfitter has filed an appeal with the Colorado Court of Appeals.
- Represented the Board of Respiratory Therapists in an action involving the denial of an application to an individual who attempted to hold herself out as a licensed Respiratory Therapist. Based on her

conduct, the applicant pleaded guilty to a felony and a misdemeanor.

- Represented the State Electrical Board in the case of a five-time felon who held a journeyman electrician license. The licensee pled guilty from 1995 to 2007 for attempted theft, theft, and three attempted escape charges for walking away from community corrections. Following a hearing, the board revoked the license.

Insurance Unit

The Insurance Unit acts as general and litigation counsel to 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 legal advice regarding changes and amendments to the insurance laws. Litigation is conducted on behalf of the Division of Insurance against unauthorized companies and individuals and insurance companies and their agents who market and sell 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. The Division of Insurance also oversees the bail bond business in Colorado and regulates bail bond agents and insurance companies that underwrite bail bonds through licensing actions and market conduct examinations.

The Insurance Unit has experienced an unprecedented increase in work volume over the past year, due to three primary factors:

- The passage of Federal Health Care reform;
- The Division's focus on reasonable containment of health care costs for consumers, specifically insurance rate

- increases, while maintaining a competitive, viable market among insurers; and,
- Consumer protection issues related to the regulation of insurance companies, insurance and bail bond producers and pre-need funeral contracts.

Current trends and focus areas include:

- *Federal health care reform*
In the past months the unit has assisted the Division with two emergency regulations, both required to bring the state into compliance with federal health care reform legislation being implemented in the fall of 2010. Between now and 2014, Federal health care reform will necessitate the Unit being involved in extensive review of regulations and statutes, as health care reform legislation is implemented on a graduated basis. The recent federal health care law also will drive the necessity for a significant increase in regulatory review of insurance carriers to ascertain compliance. Said review will fully engage the resources of the Insurance Unit, as carriers are already demonstrating a willingness to litigate issues arising from the Division's review and regulation of previously unprecedented premium rate increases by insurers.
- *Rate Issues*
In 2008 the legislature provided the commissioner with broader power and ability to investigate and regulate rates charged by insurance carriers. The Division of Insurance's review of health insurance rate increases identified premium increases that, in some cases, have risen at a level of 30 to 40 percent annually. The Division of Insurance has faced resistance from carriers to reduce rate increases to levels the Division of Insurance felt reasonable based on both actuarial and financial analysis of the company, resulting in scheduled public hearings, negotiations and litigation by the unit. Although time intensive work on the part of the Insurance Unit, the outcome has been reduced rates for consumers as well as millions of dollars of health insurance and other types of insurance premiums being refunded to consumers.
- *Market Conduct Examinations*
In an effort to provide stronger consumer protection, the Division of Insurance has engaged in more market conduct examinations, a process whereby an insurer's practices and procedures are reviewed to ascertain compliance with Colorado statute and regulations. Currently 18 Market Conduct Examinations are underway and five have been completed since July 2010. The Insurance Unit generally becomes involved in the examinations near the conclusion, to ensure due process is provided to the insurer and that final agency orders regarding violations are properly issued. In the event the insurer appeals the final agency orders, the appeal of the monetary fine becomes an appellate court action and the appeal of actual final agency orders findings becomes a District Court action. Thus, when a case is appealed two separate actions generally occur, both of which are document intensive, involving multiple hearings and significant motions practice.
- *Producer Regulation*
The Division of Insurance is charged with regulating bail bond agents and other insurance producers (agents/insurance agencies/brokers). Cases include, but are not limited to, producers who misuse or fraudulently divert premiums paid by consumers, producers who submit fraudulent insurance applications, producers with criminal backgrounds that impact the producers' ability to maintain a license, the inappropriate sale of annuities products to consumers not suited for such products and other violations of the Colorado Producer Licensing Model Act. The Unit receives the most complex cases, generally involving multiple egregious violations of the act. The act now permits the Division of Insurance to seek restitution for consumers, in addition to license sanctions and civil penalties. This will necessarily increase the complexity of litigated licensing matters.
- *Bail Bond Sunset*
Title 12, C.R.S. that pertains to the regulation of the bail bond business will undergo sunset January 2012. The Division

of Insurance regulates bail bond agents through Title 12 and Division regulations pertaining to the bail bond business. With extensive assistance of the Insurance Unit, the Division of Insurance will be providing a number of suggested revisions to existing statutes during the sunset process, which will occur in 2011. This will also involve amendment to existing regulations.

- *General Counsel Role*
The Insurance Unit has had a significant increase in the commissioner's need for general counsel advice, both due to federal health care legislation as well as need to evaluate and utilize the commissioners enhanced ability to review and regulate rapidly increasing insurance rates, which also generate broad based consumer and employer complaints. The additional bail bond and market conduct examination litigation has also magnified the commissioner's request for general counsel advice.

Significant cases in 2010 include:

- *Pinnacol Assurance*
Resulted in a \$15 million premium credit to Pinnacol's insured employers who provide workers compensation coverage to employees in Colorado, due to Pinnacol using unscheduled rating factors over a nine-year period.
- *Anthem*
Resulted in a \$20 million refund to consumers who purchased individual health insurance policies from Anthem during 2010 due to rates the Division alleged were not supported by financial data of the company.
- *International Fidelity Insurance Company*
A MCE resulted in this bail bond insurer paying a \$450,000 fine for violations of Colorado Statute and regulations.

Public Utilities Commission Litigation Unit

The Public Utilities Commission regulates the rates, charges, services, and facilities of public utilities within Colorado. The Public

Utilities Litigation Unit of the Attorney General's Office primarily represents the litigation staff of the 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 water/sewer, and motor carrier utility service is provided to all Coloradans.

Significant cases in 2010 include:

- *Black Hills Electric Rate Case*
Represented staff in the Black Hills Electric Rate Case in which the company requested an annual increase in revenue of approximately \$23 million. Staff completed its audit and review and negotiated a settlement with the company granting an increase of approximately \$18 million. Somewhat unique to this case was the fact that the settlement was reached relatively early in the process, saving significant costs and resources while still arriving at a just and reasonable outcome for both the company and ratepayers.
- *Merger between CenturyLink Inc. and Qwest Corporation*
Represented staff in a proceeding before the Commission concerning the merger between Qwest Corporation and CenturyLink which required PUC approval. The staff's active participation in the pretrial motions and discovery, along with the staff's active facilitation of resolution of issues between the parties, resulted a hearing on a stipulation and settlement agreement between all but two of the parties in the docket. A PUC decision approved this stipulation and settlement agreement between the parties, provided for contract terms and conditions for computer system transition and agreements between CLECS and Qwest and CenturyLink, new service quality metrics for retail and business customers, charitable contributions by Century Link to local charities, processes for the staff and the Office of Consumer

Counsel to review and understand the merger transition processes and costs for the entire time of transition, a commitment to not allow merger costs to be included in regulated rates, and a monetary contribution of \$70 million dollars to broadband infrastructure in Colorado.

- *Glustrom v. PUC*
Represented the PUC in an appeal brought by Ms. Leslie Glustrom in Denver District Court. The crux of this appeal related to a challenge of the legality of the PUC prohibiting Glustrom from challenging the prudence of Public Service Company of Colorado's investment in the Comanche 3 coal plant during the course of an electric rate case proceeding. The matter has been fully briefed and is now ready for the court to issue a decision.
- *Union Telephone*
Represented the staff in a PUC matter where Union Telephone sought designation as an eligible telecommunication carrier to receive federal universal support funds. The presiding administrative law judge granted Union Telephone's application.
- *Randy Lyons & Lyons Towing & Recovery*
Represented the staff in this transportation matter seeking a civil penalty assessment of \$208,725 as a result of 105 violations committed by respondents for operating as a towing carrier while their towing carrier permit was suspended. Based in part on the staff's advocacy, the PUC ordered that the respondents are ineligible to be issued another operating right for a period of two years and assessed a civil penalty for each respondent for a total civil penalty of \$417,450 in this matter.

Securities

Unit attorneys act as general and litigation counsel to the Securities Commissioner and the Colorado Division of Securities. As part of its service, unit attorneys assist the Division of Securities in the regulation of securities, issuers, broker-dealers, sales representatives, investment advisers,

investment adviser representatives and other related entities. As part of its service, Unit attorneys primarily conduct litigation in administrative and district courts on behalf of the Division of Securities against individuals and entities involved in the offering of traditional investments (such as stocks and bonds), private placement offerings, and exotic/non-traditional instruments such as derivatives (including collateralized mortgage obligations) and auction rate securities.

Significant cases in 2010 include:

- *Joseph v. Sean Michael Mueller, et al.*
Unit attorneys successfully obtained the appointment of a receiver and Temporary Restraining Order against Mueller, his company Mueller Capital Management, and his hedge fund Mueller Over Under Fund after the Division discovered evidence that strongly indicated that Mueller was essentially operating the fund as a Ponzi scheme. At the time the case was filed, materials suggested that Mueller was claiming more than \$100 million in assets, but a review of the records available revealed a much lower value of the assets remaining in the fund. Notes left by Mueller in conjunction with an aborted suicide attempt conceded that he was issuing fake statements that lied about profits to his investors. Mueller ultimately accepted the entry of a preliminary injunction (and in a related criminal case that followed, was sentenced to forty years in prison). The court appointed receiver continues to manage the assets of the defendants and wind down the affairs in an effort to return the remaining funds to investors.
- *Joseph v. Financial Services Investors #4*
Unit attorneys successfully obtained permanent bars against defendants David Bell, Lynden Bridges, and Steven Signer in connection with a failed investment in leveraged US Treasury Bonds. The commissioner alleged that the defendants, in addition to offering and selling unregistered

securities, failed to make numerous material disclosures in connection with the investment, including previous bankruptcies, a felony conviction for tax fraud from one of the defendants, and that previous investors in the fund had lost all of their money in a margin call. Defendant Bell accepted a stipulated order of permanent injunction barring him from securities practice in Colorado. Unit attorneys prevailed on summary judgment against Defendant Bridges for securities fraud and registration violations. Finally, at the trial, after the Division of Securities rested its case, Defendant Signer accepted a stipulated order of permanent injunction barring him from securities practice in Colorado. All funds collected from the defendants that were received as a part of the settlements will be returned to investors.

- *Joseph v. Aquatic Behavioral Technologies*
Unit attorneys successfully brought a resolution to a longstanding case against numerous defendants, who sought to raise investor funds for the development and marketing of a lobster calling device called “E-Bait.” The suit alleged violations of the registration, licensing and antifraud provisions of the Colorado Securities Act in marketing and selling the investment. As a result of the litigation, all defendants became subject to a permanent injunction. All funds collected from the defendants as a result of restitution or disgorgement will be returned to investors.

Division of Banking and Division of Financial Services

The Division of Banking is responsible for the regulation of state chartered commercial banks, trust companies, industrial banks, and money transmitters. The Division of Financial Services supervises state chartered credit unions, savings and loan associations, and certain financial activities of life care institutions. Unit attorneys assist and advise on a variety of matters, including charter and

license application hearings, promulgation of rules and regulations, enforcement of corresponding state laws and regulations, and any emergency issues that may arise.

During 2010 the Unit worked closely with the Division of Banking on the emergency suspension of a bank director and continued to assist with the ongoing liquidation proceeding for American International Depository and Trust.

Agriculture

The Unit acts as general and litigation counsel to the various divisions of the Department of Agriculture. As part of their 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.

One of the unit’s noteworthy cases involved the Bureau of Animal Protection seizing a Bernese Mountain Dog and her two pups after finding seven other dead puppies frozen on the ground at an outdoor kennel at a Larimer County breeding facility. The licensee stipulated that she was unfit to own

the animals, and the Department adopted them to a new home.

The unit also is prosecuting two livestock neglect and animal cruelty cases. In 2010, the Bureau of Animal Protection seized cattle from owners in Logan and Park Counties. In Logan County, over twenty head of livestock were severely malnourished, sick, dehydrated, and dying; one had to be euthanized onsite. The Logan County District Court granted the Colorado Department of Agriculture's petition for possession of the livestock and temporarily restrained the owner from owning, possessing, managing, or otherwise tending livestock in Logan County through and to a hearing for a permanent injunction. In Park County over 150 head of cattle, in a 1,200-head herd, were found dead from malnourishment and exposure. The Department of Agriculture sought possession of the entire herd, removed 379, sold that herd, and negotiated a temporary restraining order to uphold the status quo of the remainder of the herd pending a trial on whether the owner/manager should be permanently restrained from owning, possessing, managing, or otherwise tending livestock in Park County.

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.

In 2010, the Mined Land Reclamation Board conducted a lengthy rulemaking required to implement legislation passed in 2008. The board adopted final rules making information in prospecting notices of intent available to the public, as required by the legislature. The newly adopted rules also have increased requirements regarding in situ leach mining for uranium.

Also in 2010, the board ordered the Cotter Corporation to dewater the decommissioned Schwartzwalder Uranium Mine located near Golden after an investigation revealed that the closed mine was leaking uranium-tainted water into Ralston Creek. Ralston Creek flows into Ralston Reservoir, a drinking water source for Denver and Arvada. Cotter is appealing the order. Cotter has neither drained the uranium-saturated mine-pool, nor paid the penalty.

Independent Ethics Commission

Amendment 41, which was passed by Colorado voters in 2006, established the Independent Ethics Commission to handle complaints and advisory opinions to help define ethical conduct for government officials and employees. Subsequent legislation further clarified the Independent Ethics Commission's duties. Since 2008, counsel for the Independent Ethics

Commission has advised the commission in its resolution of complaints, issuance of advisory opinions, letter rulings and position statements. Those opinions, rulings and statements issued in 2010 covered a broad range of topics, including:

- Travel paid for by nonprofit organizations;
- Donation of funds to public sector employees;

- Future employment of public employees;
- And the appropriate sources of payment for the gubernatorial transitions.

Counsel also helped the Independent Ethics Commission develop the legal framework necessary for the Independent Ethics Commission to accomplish its constitutional and statutory duties.