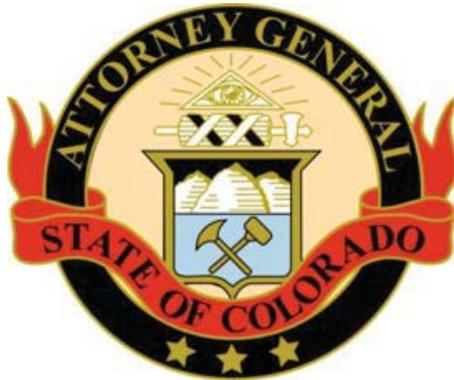


Colorado Department of Law
— Annual Report

2013



Colorado Office of the Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway
Denver, Colorado 80203
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720-508-6000



ATTORNEY GENERAL JOHN W. SUTHERS

To my fellow Coloradans,

It is a great privilege to serve as your Attorney General. Since becoming Colorado's 37th Attorney General, I have had the honor of working with hundreds of dedicated public servants at the Colorado Department of Law.

The 2013 Annual Report of the Colorado Department of Law is only a snapshot of the work we do on behalf of the people of Colorado and our clients throughout state government. From protecting Colorado's water, to defending the state against frivolous lawsuits, the work of the Department of Law's affects Coloradans throughout the state.

This year, the Department of Law moved into the new Ralph L. Carr Colorado Judicial Center. Upon the building's opening, we rededicated ourselves to the task of ensuring that our nation and state remain wholly committed to the rule of law, to the constitutional principles upon which our nation was founded, and to ensuring that what transpires in this building reflects those highest ideals. Our new home inspires us to never forget the sacrifices of those who've gone before us.

We will continue to provide ethical representation and legal advice of the highest caliber to our client agencies and service of the highest quality to the people of Colorado.

Sincerely,

A handwritten signature in black ink that reads "John W. Suthers". The signature is written in a cursive style with a long horizontal stroke at the end.

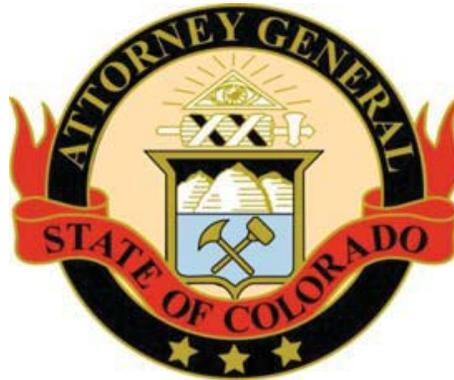


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***** Cover and Back Photos Courtesy of Michael Ciavatta***

Attorney General John W. Suthers



John W. Suthers has served as District Attorney, presidentially-appointed U.S. Attorney and now as Colorado's 37th Attorney General, having served since January of 2005. As Attorney General, he represents and defends the interests of all Coloradans and is chief legal counsel and advisor to state government and its many agencies, boards and commissions. In his tenure as Attorney General, Mr. Suthers has initiated successful programs to protect children from Internet predators, reduce mortgage and foreclosure fraud, and combat drug abuse in Colorado.

He has served on the executive committee of the National Association of Attorneys since 2007 and has been a member of the U.S. Attorney General's Executive Working Group on Prosecution since 2005. In June, Mr. Suthers was awarded the Kelley-Wyman Award by the National Association of Attorneys General. It is the highest award given by the Association and is presented annually to the Attorney General who has done the most to advance the interests of the Association.

He graduated magna cum laude from the University of Notre Dame with a degree in Government and from the University of Colorado Law School. Mr. Suthers has authored six books including *No Higher Calling, No Greater Responsibility: A Prosecutor Makes His Case*, an analysis of the prosecutor's role in the justice system.

Mr. Suthers has served on the board of numerous civic organizations. He is an adjunct professor at the University of Denver Law School and a Scholar in Residence at the University of Colorado, Colorado Springs campus.

Chief Deputy Attorney General Cynthia Coffman



Photo courtesy of Terri Connell

Cynthia Honssinger Coffman serves as Chief Deputy to General Suthers and supervises the attorneys and staff and manages all administrative functions of the Department of Law. In September 2012, Ms. Coffman won *Law Week Colorado's* Barrister's Best Award for Best Public Sector Lawyer.

Before joining the Office of the Attorney General in March 2005, Ms. Coffman served as chief legal counsel to Colorado Governor Bill Owens. From 1999 to 2003, she served as Director of Legal and Regulatory Affairs and later as Deputy Director of the Colorado Department of Public Health and Environment. Previously, Ms. Coffman worked for the state's Office of Legislative Council and staffed the Senate Judiciary Committee.

A native of Missouri and a graduate of the University of Missouri, Columbia, she earned a JD at Georgia State University College of Law and practiced law in Georgia before moving to Colorado in 1997. Ms. Coffman worked as an attorney for the Georgia Attorney General and the Atlanta Committee for the Olympic Games.

Solicitor General Daniel D. Domenico



Photo courtesy of Law Week Colorado

Attorney General Suthers appointed Dan Domenico as Solicitor General of Colorado in April 2006. In 2012, he argued his first case before the U.S. Supreme Court, *Wood v. Milyard*, concerning whether or not a federal appellate court can raise the untimeliness of a convicted felon’s habeas corpus petition despite the issue not being decided at the district court level. The state argued that the 10th Circuit Court of Appeals did not err in raising the issue.

Before joining the Office of the Attorney General, Mr. Domenico was special assistant to the solicitor of the United States Department of the Interior. In that role, he advised the Secretary and senior management of the Department on a wide range of matters relating to National Parks, federal land, water resources, energy production, and other issues important to Coloradans and citizens of the American West. Prior to his work at the Interior Department, Mr. Domenico practiced for several years in the Denver and Boulder offices of the national law firm Hogan & Hartson. He also clerked for Judge Tim Tymkovich of the United States Court of Appeals for the 10th Circuit (himself a former Colorado Solicitor General), and also worked with U.S. Senator John Thune.

A Boulder native, Mr. Domenico 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.

Mission: *It is the mission of the Department of Law to provide professional, ethical, and independent legal services to the State of Colorado and its citizens, to promote respect for law and access to the justice system, to ensure the fair and open exercise of government, and to protect and advance the public interest.*

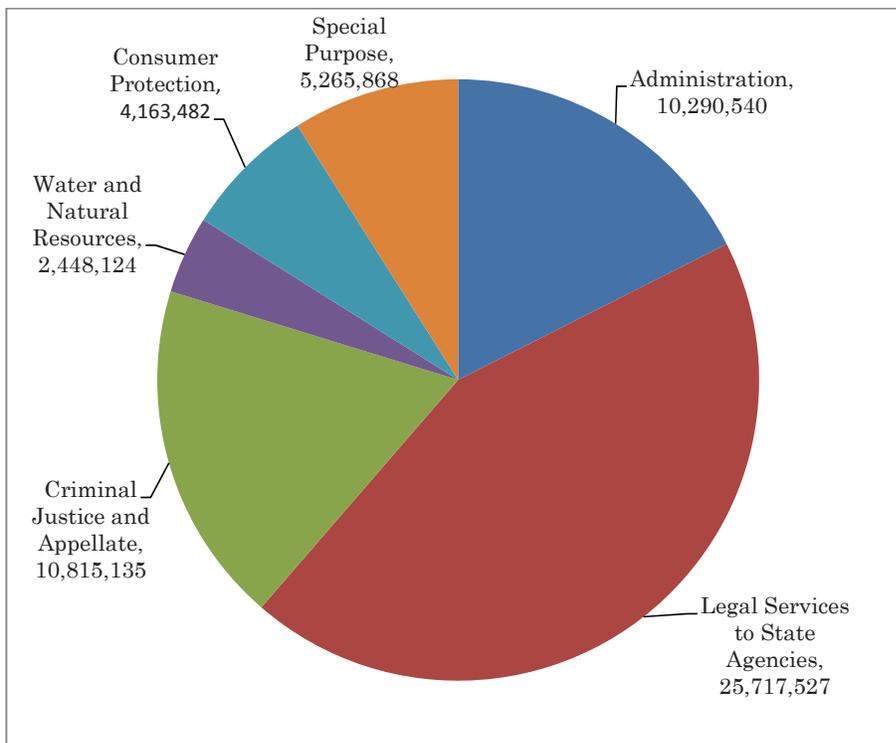
Vision: *It is the vision of the Colorado Department of Law to be the premier law enforcement agency and public law office leading the state with the trust, confidence, and support of partners, consumers, and policy-makers, while committing to the highest professional and ethical standards.*

Focus: The Colorado Department of Law is focused on:

- Upholding the United States and Colorado Constitutions.
- Providing the highest level of ethical legal service to the State of Colorado.
- Defending the laws and officers of the State of Colorado from legal challenge.
- Protecting and preserving the quality of Colorado's land, water and air.
- Advocating for policies that help law enforcement improve community safety.
- Protecting Coloradans from consumer scams and fraud.
- Ensuring that Colorado's elections remain free from criminal fraud.
- Promoting open, accountable governance.

The Department of Law Budget

Total Fiscal Year 2012 – 2013
Appropriation: \$58,700,676
Total Full-Time Employees: 433



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. Consumer protection enforcement activities are handled by four distinct units which handle numerous consumer protection laws.

Consumer Protection/Fraud Units

Consumer Complaints

In 2013, complaint intake processed 6,313 general consumer complaints and 902 mortgage-specific complaints for a total of 7,215 complaints. In addition, intake received approximately 11,238 phone calls and 3,948 pre-recorded message inquiries.

Education and Outreach

The Unit engaged in extensive consumer education and outreach efforts to Colorado consumers. The Unit continued development and issuance of consumer fraud advisories and bulletins and circulated more than 11,229 consumer fraud publications throughout Colorado including the "Identity Theft Repair Kit" and the "Consumer Guide for Military Members and their Families" which was shared with 95 military, veteran's and nonprofit organizations and statewide. As part of the outreach efforts, the unit also continued assisting the Public Information Officer in communications and with social media platforms. Between 2012 and 2013, the Office's Facebook exposure increased 138% and Twitter 586% compared to 2012.

Mortgage Fraud and Foreclosure Prevention

The relief provided for under the National Mortgage Settlement (NMS) contributed to the housing recovery in Colorado during 2013. Focus on foreclosure prevention and protection of homeowners continues. Under that settlement, the five largest mortgage servicing companies agreed to a \$25 billion settlement that provides loan relief for homeowners trying to save their homes from foreclosure. As a direct result of this settlement, more than 7,500 Colorado homeowners avoided foreclosure and received loan relief totaling \$425 million.

Colorado also recovered more than \$51 million under this settlement for the

custodial purposes of foreclosure prevention and housing stabilization. This relief has gone a great distance in helping Colorado's housing market recover from the foreclosure crisis, including:

- Approximately \$10 million was committed to projects that will create or preserve 900 affordable housing units across the state.
- Two loan programs were funded with \$24 million to assist homeowners avoid foreclosure.
- The \$5.625 million dedicated to housing counseling agencies fortified and expanded housing counseling services across the state and in previously underserved areas such as the Western Slope and Northern and Southern Colorado.
- The \$1.5 million dedicated to Colorado Legal Services made legal services available statewide for low income and elderly residents who are in need of legal assistance during a foreclosure.

In addition to these foreclosure prevention efforts, this office has continued investigations and lawsuits against local companies that took advantage of homeowners. The Attorney General's Office spent considerable time and effort investigating the billing practices of law firms and related parties involved in residential foreclosure in Colorado. *See In re Foreclosure Investigations*, Civil Action No. 13CV31914, Div. 203 (Denver Dist. Ct.).

Antitrust

The price fixing of e-books litigation was a focus. The Section along with the U.S. Department of Justice (DOJ) and 16 other states sued *Apple, Inc.* and five large e-book publishers for conspiring to fix prices and restrain competition in the e-books market. After settling with the publishers, the states and DOJ went to trial and Apple was found guilty of price-fixing e-books. Settlements with the publishers will result in payments to affected consumers totaling \$166 million.

Tobacco

Under the 1998 Tobacco Master Settlement (MSA) a favorable ruling was obtained in the 2003 diligent enforcement proceedings. An arbitration panel ruled that Colorado had diligently enforced its laws during 2003 with regard to cigarette sales made by companies not participating in the MSA. This ruling is expected to result in the return of nearly \$10 million in moneys withheld from Colorado.

Consumer Fraud

The Unit continued to develop and manage victim-restitution process by utilizing electronic victim surveys and questionnaires, document management systems, notification alerts, and actual distribution of funds to victims. Restitution distribution totaled \$2,028,065.47 to 822 consumers.

During 2013, the Unit took a series of actions, including:

- *America's Note Network/Dalbey Education Institute*: Two years of contested litigation concluded with a \$330 million Consent Judgment against infomercial telemarketer Russ Dalbey and his wife. The Consent Judgment contains injunctive relief that prohibits the Dalbeys from any further telemarketing.
- *Argosy University*: The for-profit university agreed to fully reimburse 61 students who attended the school's psychology counseling program. None of the students has obtained a license to practice despite Argosy's representations that the program would result in licensure. Argosy must reimburse the students for all tuition paid to the school as well as a significant portion of the student's living expenses incurred during their time at Argosy. Argosy must discontinue representing its doctorate of education in counseling psychology program as a licensure-track program.
- *Boobies Rock/Adam Shryock* – Defendant Adam Shryock misrepresented his businesses, Boobies Rock and Say No 2 Cancer, as charitable companies selling merchandise to raise money for cancer patients and their families. The office filed for a joint and several default judgments against all defendants for

approximately \$4 million. The office alleged that Shryock is in contempt of the court's preliminary injunction order prohibiting him from further charitable sales and a contempt hearing is set for early January 2014.

- *Magazine Sales/Brian Patterson*: The Colorado Attorney General obtained a \$6 million judgment against magazine seller Michael Brian Patterson following a three-day trial. The Court found that Patterson engaged in a pattern of convincing consumers that their existing magazine provider was calling to offer a reduction in their current magazine subscription.

Consumer Credit Unit

The Consumer Credit Unit enforces nine 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 Child Support Collection Consumer Protection Act (private child support collections), the Debt-Management Services Act (credit counseling and debt settlement), the Credit Services Organization Act (credit repair), the Rental Purchase Agreement Act (rent-to-own), and the Refund Anticipation Loans Act.

Lending Practices

The Unit regulated and supervised 751 licensed lenders consisting of payday lenders (34%), mortgage companies (50%), finance companies (14%), and small installment and other lenders (2%). Credit laws were enforced against 1,390 other companies including creditors that sell goods and services on credit, sales finance companies that collect those contracts, and rent-to-own companies.

Required refunds of more than \$1.4 million to Colorado consumers in excess finance charges and other credit overcharges from compliance examinations, investigations of consumer complaints, lawsuits, and settlements. Obtained \$66,000 in penalties, costs and fees from settlements and lawsuits.

Conducted 263 compliance examinations of licensed lenders, creditors, and sales finance companies and required them to take corrective action and refund overcharges.

Investigated 362 written consumer complaints against licensed lenders, creditors, sales finance companies and credit repair companies.

Obtained a favorable ruling from the Court of Appeals in *Oasis Legal Finance, LLC and Funding Holding, Inc. dba LawCash*'s finding that monies advanced to consumers involved in personal injury litigation were loans governed by the Uniform Consumer Credit Code.

- *Tulips Investments*: In the *Tulips Investments, LLC d/b/a*

CashBanc, the Colorado Supreme Court granted cert to review the Colorado Court of Appeals' favorable ruling that the state's investigative subpoena authority extended to out-of-state businesses doing business in Colorado.

- *Cash Call*: Commenced litigation, simultaneously with the Consumer Financial Protection Bureau against *CashCall, WS Funding, Delbert Services and J. Paul Reddam* for the servicing and collecting on illegal loans made by *Western Sky* and other entities.
- *Cease & Desist*: Sent five cease and desist advisory notices to unlicensed payday lenders, seven cease and desist advisories to merchants for illegal credit card surcharges, and two to an auto dealer for advertising violations.

Debt Management

- Regulated and supervised 46 credit counseling and debt settlement companies.
- Investigated 35 written complaints against debt-management providers.
- Conducted four compliance examinations on registered debt-management providers.
- Obtained a stipulation and final agency order of \$225,000 and a permanent injunction against *Credit Answers, LLC and William B. Loughborough*, in an administrative action for providing debt-management services to

Colorado consumers without complying with the state's consumer protection laws.

- Handled appellate cases in the Colorado Court of Appeals: *Morgan Drexen, Inc., et al.* was appealed from a Denver District Court decision that held when the company provided debt-management services under the purported supervision of attorneys, it was exempt from the Debt-Management Services Act; and *Johnson Law Group (Florida)* was appealed from a Denver District Court decision dismissing the state's claims based upon the attorney exemption.
- Filed a lawsuit against registered debt-management services provider, *Freedom Debt Relief*, alleging various violations of the Colorado Uniform Debt-Management Services Act. Freedom Debt Relief is the largest registered provider of debt-settlement services in Colorado.
- Initiated administrative action against *Century Negotiations*, a registered provider of debt-management services, alleging that *Century Negotiations'* business practices violate the Colorado Uniform Debt-Management Services Act in numerous respects.
- Sent 26 informational packets to companies about the debt-management law based on internet searches, consumer complaints and media advertisements.

Debt Collection

- Regulated and supervised 785 licensed collection agencies.
- Investigated 1,023 written complaints and inquiries against collection agencies.
- Investigated or litigated 64 cases and obtained \$347,120 in fines, payments and consumer restitution through voluntary stipulations and settlements.
- Conducted compliance examinations on six licensed collection agencies.
- Filed a lawsuit against a debt buyer, *United Credit Recovery* and its principal *Leonard Potillo*, a local collection agency *GTF Services* and its law firm *Standley & Associates*, for the making, distribution and use of fraudulent affidavits in debt collection actions against Colorado consumers.
- Resolved administrative charges against *Lighthouse Recovery Associates, LLC* involving 12 consumer complaints, faulty collection notices and collecting on illegal payday loans. The Agency signed a stipulation and paid a total of \$60,000. Administrative charges were also resolved against *Diversified Consultants, Inc. d/b/a Differentiated Consultants International, Inc.* The agency signed a stipulation and is paying a total of \$40,000. And, resolved administrative charges against *Glass Mountain Capital, Inc.* that allowed its license to expire yet

continued to engage in unlicensed debt collection. The Agency signed a stipulation and paid a total of \$21,000.

- Issued 96 cease and desist notices to unlicensed collection agencies.

Office of Consumer Counsel Unit

The OCC Unit provides legal support and represents the Office of Consumer Counsel (OCC) which advocates before the Public Utilities Commission on behalf of residential, small business, and agricultural electricity, natural gas, and telephone ratepayers. On behalf of the OCC, staff in this Unit appeared or worked on 80 matters before the Commission, including protests, interventions, and rulemaking activities and before Colorado Courts. Consumer realized savings of approximately \$50.2 million. Some of the significant cases this year include:

- Public Service Company of Colorado (Public Service) Advise Letter seeking a multi-year plan which would increase its natural gas revenue requirement by approximately \$82.2 million in 2013, \$9.8 million in 2014 and \$12.1 million in 2015. The OCC opposed the proposed multi-year plan and recommended that the Commission approve a single rate increase based on a historic test year of more than \$43 million. The administrative law judge (ALJ) issued her recommended decision denying the multi-year plan which

the Commission approved and a revenue requirement increase of \$29.6 million was approved.

- Public Service Company Application seeking approval of its 2011 Electric Resource Plan (ERP). Subsequent to this filing, Public Service filed two additional applications seeking to retire its Arapahoe No. 4 coal-fired generating station by the end of 2013 and to enter into a multi-year transaction with Southwest Generation Operating Company (Arapahoe 4 Application) and to acquire the Brush Units No. 1, 3 and 4 generating facilities (Brush Application). In January, the Commission approved Public Service's ERP application; approved the Arapahoe 4 application, in part; and denied the Brush Application. In Phase II of this proceeding, Public Service filed its 120 Day Report seeking approval of its preferred portfolio of electric generation. The OCC filed its Comments and a Phase II decision is pending.
- Public Service Company application seeking to recover approximately \$16.6 million in costs incurred in the SmartGrid City Project (SGC Project) in Boulder. The \$16.6 million was not included in the Commission's prior order which granted Public Service recovery of \$27.9 million for the SGC Project. The OCC filed answer testimony criticizing how Public Service handled the SGC

Project and recommended that the Commission deny Public Service recovery of the \$16.6 million. The ALJ in January issued his

recommended decision denying Public Service's application for additional SGC Project cost recovery.

Criminal Justice Section

The Criminal Justice Section of the Colorado Attorney General's Office is recognized as a premier prosecutors' office in the state. The Section assists local prosecutors and law enforcement agencies throughout the state on matters that occur in more than one local jurisdiction, including presenting cases to the statewide grand jury and serving as special district attorneys in local counties as requested. Section members provide special assistance to district attorneys in complex violent crimes including homicides and cold cases. The section also prosecutes multi-jurisdictional cases that include human trafficking, major drug trafficking organizations, white-collar and environmental crimes. The Section also prosecutes crimes in which it has original jurisdiction that include securities, insurance, Medicaid, and election fraud.

Prosecution of crimes in the Criminal Justice Section may be initiated through direct filings, in which the prosecutor files charges directly with the court, or through the use of the statewide grand jury, which hears testimony, views evidence and decides whether to issue criminal charges through an indictment.

The Peace Officer Standards and Training Board (POST) is also overseen by this Section and coordinates the prosecution of foreign fugitives.

Colorado Justice Review Project

In its fourth year of existence, the Attorney General's Office again led the

Colorado Justice Review Project (JRP) in reviewing criminal convictions pursuant to a grant from the National Institute of Justice's Post-Conviction DNA Testing Assistance Program. The JRP staff consists of two attorneys, a criminal investigator and legal interns who review cases to determine whether DNA testing would identify a different perpetrator of the crime and establish innocence for an incarcerated inmate. The work of the JRP is a collaborative effort with the Colorado Department of Corrections, the Colorado Bureau of Investigation, members of the defense bar, the Colorado State Public Defenders Office and the Office of Alternate Defense Counsel, law enforcement agencies across the state and with the elected District Attorney's Offices.

JRP Highlights from 2013 include:

- Collaborated with the Denver District Attorney's Office and reviewed cases originating in the 21 counties outside of Denver County while JRP staff at the Denver District Attorney's Office reviewed cases originating in Denver County.
- In cooperation with the Colorado Department of Corrections distributed applications to more than 7,900 inmates incarcerated on crimes of violence in the beginning of 2012. Application review continued through 2013 with more than 600 inmates seeking to have their cases reviewed for possible exoneration through DNA testing.

- Following the April 2012 exoneration of Robert Dewey, the JRP was called upon by the state's legislature to assist in drafting a bill to compensate those who had been wrongfully incarcerated. In June of 2013, Governor Hickenlooper signed the bill into law, granting Mr. Dewey more than \$1.1 million in compensation for his nearly 17 years of wrongful incarceration.

Foreign Prosecutions Unit

The Foreign Prosecutions Unit (FPU) is an extremely effective, internationally recognized unit that saves Colorado millions of dollars in prosecution and incarceration expenses every year. Through dedication and strong working relationships, the work of the FPU ensures justice for victims and their families, helps prevent fugitives from committing additional offenses in Mexico, and most importantly, brings these fugitives to justice. The FPU works with Mexican authorities to prosecute, apprehend and incarcerate fugitives in Mexico.

Foreign prosecutions occur when a victim or defendant is a Mexican national and the offender has fled from the United States to the Republic of Mexico. The fugitive can be subjected to prosecution by Mexican authorities in Mexico pursuant to Article IV of the Mexican Federal Penal Code (Article IV) and also by mutual agreement through an international treaty. These proceedings are based on casebooks submitted by the FPU investigator to the Federal Attorney General's Office of the Republic of Mexico in Mexico City – the Procuraduría General de la República (PGR). Mexican

authorities have supported Colorado law enforcement through extradition or expulsion of suspects. Working with Mexico, and U.S. agencies including HSI/ICE, U.S. Marshal's Service and the FBI, the FPU continues to assist as a liaison for federal, state and local agencies in returning American citizens to stand trial in this country.

When witnesses return to Mexico after a crime is committed and are later needed for the prosecution, the FPU provides assistance to the local district attorney's offices to return the witnesses to Colorado pursuant to a Significant Public Benefit Parole Visa issued through Homeland Security and the State Department.

Key FPU accomplishments from 2013 include:

- Completed investigations on several Article IV cases and continued work on open case investigations and filings for the Mesa County Sheriff's Office, El Paso County Sheriff's Office, Aurora Police Department, Federal Heights Police Department, Adams County Sheriff's Office, Montrose Police Department, Thornton Police Department, Evans Police Department, Colorado Springs Police Department, Westminster Police Department, and Greeley Police Department. The investigator is responsible for continued work on outstanding arrest warrants and works with the respective law enforcement agencies to conduct follow-up interviews of witnesses and to develop further information to locate and apprehend fugitive suspects.

- With FPU assistance, Mexican authorities apprehended several suspects charged with murder and who are currently in custody awaiting the Mexican federal court's ruling and sentencing orders.
- Located and assisted in the return of witnesses to Colorado from Mexico to testify in a murder trial in the 3rd Judicial District. Because of FPU's efforts in securing the witnesses' attendance at trial, the defendant pled guilty.

Victim Assistance Program

The Victim Assistance Program and its Victim Services Coordinator are a resource to prosecutors and investigators in the Criminal Justice Section as well as other units within the Department of Law. The Victim Services Coordinator is a liaison for the Department of Law to the statewide network of victim services. The Coordinator holds positions on the Colorado Organization for Victim Assistance (COVA), the Sex Assault Interagency Council (SAIC), the Colorado Coalition Against Sexual Assault (CCASA), the Victim Witness Coordinators Networking Group, and the Domestic Violence Program. Additionally, the Coordinator is a resource within the Department of Law for employees suffering intimate partner violence and other types of victim issues in their lives and provides support and referrals in keeping with the Office's Domestic Violence Policy.

In 2013, the Victim Assistance Program was called upon to:

- Provide support when Nathan Dunlap's death sentence was given a temporary reprieve by Governor

Hickenlooper. The coordinator took lead in hosting the victim and families of the murder victims by defendant Dunlap.

- The Coordinator also added trial support to the program's services and assisted CJS prosecutors in witness coordination and services in murder and insurance-fraud cases.
- Victim Assistance Program provided more than 1,600 notifications to victims of violent crimes while the convictions and sentences in the offenders' cases were on appeal. Other services provided to crime victims were post-trauma advocacy, referrals to Victim Compensation and other community resources, and accompaniment to 15 oral arguments in the Colorado Court of Appeals and the Colorado Supreme Court.

Prosecution Assistance Unit

The Criminal Justice Section was proud to create a new unit in September, the Prosecution Assistance Unit (PAU). The existing Colorado Justice Review Project, The Foreign Prosecutions Unit and Victim Assistance Program now comprise the new unit which will create efficiencies in the section.

Securities Fraud Unit

Each year, millions of dollars are taken from Colorado citizens through securities fraud which takes many forms including pyramid schemes, Ponzi schemes, oil and gas investment schemes, and "fix-and-

flip” housing scams, among others. Colorado’s aging population is often specifically targeted by those seeking to perpetrate investment crimes, and the resulting losses to retirement funds and life savings can be catastrophic. In addition, due to the impending explosion of retirees, the potential for losses are ever increasing.

The Attorney General was granted the authority to aggressively prosecute criminal violations relating to securities and securities fraud. The Office of the Attorney General is recognized statewide for its expertise on securities fraud matters and works many high-profile cases. The Unit utilizes its original jurisdiction to independently investigate, charge and prosecute securities violations statewide. The Securities Fraud Unit frequently utilizes the statewide grand jury for these sophisticated and complex cases and collaborates closely with the Colorado Division of Securities and Colorado law enforcement agencies to prosecute these crimes. The Unit is made up of two attorneys, two investigators, a paralegal and half of the time of an administrative assistant.

In 2013, investigators continued work on some 2012 cases and reviewed a total of 93 complaints derived from multiple sources, including law enforcement agencies the Colorado Division of Securities, citizens, and a complaint website. After review, investigators and attorneys ultimately referred some cases to other sources or determined further formal investigation was not warranted.

Key accomplishments from 2013 include:

- The Unit obtained guilty pleas from six defendants who committed securities fraud and secured restitution orders totaling

\$4,040,002 on behalf of 57 victims. In all but one case, the charged defendant was convicted of one or more violations of class three felony securities fraud. Most defendants were sentenced to the Colorado Department of Corrections.

- To ensure restitution is made regularly to victims of securities fraud, the Unit tracks restitution that is paid into various court registries throughout Colorado. The Unit tracked restitution payments on behalf of 2,553 victims during 2013. More than \$108,936.77 was collected by the courts on behalf of victims.

Noteworthy in 2013 include:

- *People v. Clinton Fraley*: Clinton Fraley worked for several investment companies and then started his own investment firm called “Wealth by Design, Inc.” Fraley solicited friends and acquaintances to invest with this new firm. Without authorization, Fraley requested redemption of retirement and other investment accounts of four clients from a mutual fund company where the funds were held. He then physically intercepted the redemption checks at the homes of his clients and forged those checks converting more than \$500,000 of client money. He used the money for his own gain and purchased a townhome and an interest in an airplane. He was convicted of securities fraud and sentenced to serve 12 years in the Department of Corrections.

- *People v. Martin Hutchison*: Martin Hutchison solicited investors for real estate purchases and collecting more than \$1 million dollars over approximately five years. Hutchison met most investors through a church connection and told them that he would use their investment funds to purchase distressed homes, make needed repairs and improvements on those homes, and then resell them at a substantial profit. Rather, he used the vast majority of the collected money for personal expenditures, including renovations to his own residence. Hutchison pleaded guilty to two counts of securities fraud and agreed to pay restitution of \$1,076,718.11 and was sentenced to 12 years in the Department of Corrections.

Insurance Fraud Unit

Colorado residents pay many millions of dollars annually in insurance premiums. When insurance fraud in its many varied forms occurs, those costs are not only borne by the insurance companies, they are also passed on to Coloradans in the form of higher premiums and insurance costs. Typical cases involve staged accidents, theft of premiums, fraudulent claims, contractor fraud and overbilling for services. The Insurance Fraud Unit is tasked with the investigation and vigorous prosecution of criminal offenses relating to insurance fraud. Charges often involve crimes such as theft, forgery, identity theft, and in some instances, racketeering. The Unit consists of four attorneys, six investigators, one full-time paralegal, one half-time paralegal, and half of the time of an administrative assistant. This Unit is uniquely situated

to handle insurance fraud cases and staff is highly regarded statewide due to their expertise in this area. Staff share their expertise and provide assistance to other investigators and law enforcement throughout the state.

The Unit continues to see a large number of staged accidents of motor vehicles. In terms of loss, The Unit has been attempting to coordinate the investigations of staged accident rings with the dozens of insurance companies affected. During 2013, the Unit continued to experience a dramatic increase in referrals receiving 1,717 referrals of potential criminal cases relating to insurance fraud (by comparison, in 2012 there were 1,385 referrals). Most 2013 referrals were made to the Unit by the Colorado Division of Insurance and the National Insurance Crime Bureau (NICB).

In addition, the Unit investigated and responded to a number of citizen complaints. The Unit continues to work larger, more complex cases both internally and in conjunction with other law enforcement agencies. It conducted several large and complex investigations in the statewide grand jury and obtained grand jury indictments some of which carried over from 2012. By collaborating with the National Insurance Crime Bureau, the Unit leveraged its unique expertise to initiate investigations based upon analysis of crime patterns and the assimilation of insurance data. Insurance crimes often goes unnoticed by individual insurance companies because the claim losses are spread out among different companies. The Insurance Fraud Unit is changing that.

In 2013, the Unit opened 147 new investigations after screening all of the case referrals to determine which cases had potential for verifiable criminal

activity. The Unit recorded the following categories for referrals: 763 auto, three annuity, 153 accident and health, 23 life insurance, 353 homeowners, 69 workers compensation, five commercial, 40 commercial auto, one title, 48 agent/broker, and 259 others. 51 new felony criminal cases were filed in Colorado courts by complaint or by indictment in Adams, Arapahoe, Denver, El Paso, Jefferson, Mesa, Montrose, Pueblo, and Weld counties. During 2013, the Unit supervised the restitution payments of 52 defendants on probation for insurance fraud-related crimes and collected \$293,655.15 in restitution. Additionally, the Unit achieved new restitution orders totaling \$3,395,207.21.

Noteworthy cases prosecuted in 2013 include:

- *People v. Chiniece Carter*: Chiniece Carter was indicted by the statewide grand jury for violating the Colorado Organized Crime Control Act, theft and forgery. Carter ran a sophisticated criminal enterprise built around the submission of false insurance claims and forged documents. For example, she reported fictitious accidents to insurance companies then submitted forged hospital bills and requested reimbursement. On the date of the alleged accident, Carter would take her children to the emergency room and request a medical evaluation. She would then alter the medical billing invoices and substantially inflate the cost of treatment. The altered documents were then submitted to various insurance companies. Because these claims involved injuries to children, payment was often expedited. After law enforcement confronted her, Carter recruited several others to submit fraudulent claims on her behalf. In total, she submitted more than twenty fraudulent insurance claims and stole approximately \$200,000.
- *People v. Brionna Nguyen*: Brionna Nguyen was indicted by the statewide grand jury on multiple counts of insurance fraud spanning 17 years. Nguyen was involved in more than nine motor vehicle accidents between 1994 and 2011 for which she filed fraudulent insurance claims. Nguyen claimed and received treatment for soft tissue injuries, often denying to insurance providers or medical professionals that she had any prior accidents or injuries. She also repeatedly claimed and was paid for the same motor vehicle damage paid for in previous accident claims. Nguyen would often set up the accidents to occur by stopping at the bottom of an icy hill during a snowstorm. Insurance companies paid more than \$250,000 to or on behalf of Nguyen as a result of the fraudulent claims. She was convicted of 21 counts of theft and forgery, including four Class 3 Felonies.

Medicaid Fraud Control Unit

Colorado pays approximately \$5.6 billion each year to more than 10,000 participating Medicaid providers such as nursing homes, physicians, psychologists and mental health therapists, dentists, pharmacies, laboratories, hospitals, clinics, and durable equipment providers. More than 700,000 Coloradans qualified

for Medicaid benefits in 2013. The Medicaid Fraud Control Unit (MFCU) preserves state resources devoted to Colorado’s Medicaid program and protects those funds against fraud.

The Unit defends the financial integrity of the state’s Medicaid program and the safety of patients in Medicaid-funded facilities. Staff investigate and prosecute fraud by providers against the Medicaid program as well as patient abuse, neglect and exploitation in Medicaid-funded facilities. The MFCU serves as an authority and training resource on abuse prevention and investigations. Additionally, it pursues civil recoveries and damages against providers under the Colorado Medicaid False Claims Act.

The MFCU works closely with its counterparts in other states and the federal government on a broad range of fraud cases that span multiple jurisdictions. In 2013, several of these cases resulted in regional and nationwide settlements that included activities occurring in Colorado. Other cases resulted in federal criminal charges being filed against individuals and corporations. MFCU members also participate in several working groups with local law enforcement and other agencies dedicated to combatting healthcare fraud.

In 2013, the Unit opened 143 cases (135 fraud and eight patient abuse/neglect) and 14 new criminal cases were filed with the courts throughout Colorado. MFCU obtained 14 criminal convictions and 35 civil settlements and recovered \$10,935,419.10. In addition, 140 cases were resolved and closed.

- Key cases from 2013 include:

People v. Melody Stoops, People v. Kathy Nunemaker, and People v. Lois Hickman: These three individuals were co-actors in a common scheme to defraud Medicaid. Melody Ann Stoops, who operated a medical billing company, conspired with Kathy Nunemaker, a speech therapist, and Lois Hickman, a physical therapist, to submit false information to the Medicaid program to collect inappropriate payments. All three were convicted of felonies and sentenced to pay \$54,000.00 restitution, court costs and fees, perform 248 hours of Useful Public Service and serve 10 years on probation.

- *People v. Sandra Arguello*: Sandra Arguello pleaded guilty to felony theft in Arapahoe County District Court. Investigation by the MFCU revealed that Arguello, a participant in Medicaid’s Consumer Directed Attendant Support Services (CDASS) program, submitted fraudulent timesheets to Medicaid indicating that services were being provided when, in fact, they were not and Medicaid paid Arguello based on the fraudulent time sheets. Investigation further revealed that Arguello stole the personal information of another individual in order to make the criminal scheme work. The court ordered Arguello to serve 60 days in jail

prohibited.

- *Colorado False Claims Act lawsuit against Columbine Express:* The Civil Division filed the state's first lawsuit under the Colorado False Claims Act in Jefferson County District Court alleging that Columbine Express, LLC, a Medicaid transportation provider, billed the state for transportation that it was not licensed by the Public Utilities Commission (PUC) to provide. Without PUC licensure, such claims are not reimbursable under the program. The case is expected to resolve in 2014.
- *Hospital Billings Program:* The Civil Division saw further success in its hospital billings program, where claims analysis is done to determine whether a home health or home services provider is billing for any services provided during times when the client is in the hospital. Home services may not be billed during hospitalization times, and the MFCU has discovered dozens of providers submitting such bills on small or large scales. At the close of 2013, the MFCU settled approximately 45 cases with such providers, netting a total of \$81,230.29 in reimbursements and penalties.

Special Prosecutions Unit

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 including check and credit card fraud. Additionally, the Attorney General functions as the legal advisor to the statewide grand jury. This function further allows the Special Prosecutions Unit to undertake the investigation and prosecution of complex criminal cases that occurred in multiple judicial districts throughout the state. These complex cases involve narcotics trafficking, burglaries, robberies, auto theft, identity theft and human trafficking.

The Special Prosecutions Unit (SPU), which is comprised of seven attorneys, five 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 by the governor. Unit attorneys prosecute cases throughout the state either under the auspices of the Attorney General or as specially appointed Deputy District Attorneys in the 22 judicial districts.

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 multiple environmental crimes of significance during 2013 and obtained multiple convictions. The Unit works closely with the U.S. Attorney's Office, the Environmental Protection Agency and other state and federal agencies to pursue

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environmental crimes that detrimentally impact Colorado's water, air and soil.

The Violent Crime Assistance Team is also part of SPU. It is an expert team consisting of two attorneys and a seasoned homicide investigator who provide critical support and assistance to the elected district attorneys and to local law enforcement throughout the state in matters involving all aspects of major violent crimes including homicides and cold cases. In 2013, members of the Violent Crime Assistant Team assisted local prosecutors and investigators in 12 counties with two attorneys serving as special prosecutors in first degree murder cases and supported the District Attorneys for the 7th, 12th, 16th, and 22nd Judicial Districts. Additionally, a Unit attorney provided specialized legal advice and consultation in 2013 to the District Attorney for the 18th Judicial District as that office prosecuted a series of capital cases. Unit attorneys and its investigator also conducted a variety of invaluable trainings for this state's prosecutors and investigators on the topic of complex homicide prosecutions, including cold cases.

Additionally, many defendants who were indicted in 2011 and 2012 as part of other narcotics distribution cases had their cases resolved by Unit attorneys in 2013 in Larimer, Denver and Jefferson Counties. These case dispositions included lengthy sentences to Department of Corrections in excess of 30 years for some of the key leaders of the various narcotics trafficking organizations. In 2013, the Unit's Auto Theft Initiative investigated

several auto theft rings that resulted in grand jury indictments.

Noteworthy cases prosecuted by the Special Prosecutions Unit in 2013 include:

- *People v. Frederick Mueller*: In May 2008, Frederick Mueller and his wife, Dr. Leslie Mueller, went for a hike up Cottonwood Creek, near Lake City, Colorado. Mueller reported that his wife fell approximately twenty feet and was then swept downstream. First responders found Dr. Mueller drowned less than 150 feet downstream with her head pinned beneath a log, without injury or damage to her clothing. The District Attorney charged Mr. Mueller with murder in February 2012 and in 2013, Mr. Mueller was tried twice for murder. In each trial, the jury was unable to reach a verdict. VCAT assisted in the investigation, charging, and trials over five years.
- *Operation Thirst Quencher*: The continued proliferation of narcotics trafficking into Colorado led the SPU to initiate a large-scale narcotic distribution investigation that resulted in the indictment of 15 defendants in 2013. This important case involved the well-orchestrated importation of liquid methamphetamine in the form of factory-sealed bottles of energy drinks and in the windshield washer reservoirs of cars from northern Mexico through El Paso, Texas, and destined for Colorado.

These cases are currently being prosecuted by a Unit attorney in a state district court.

- Operation Pharmland:* The Attorney General's Office was on the front lines of combating the epidemic of prescription fraud abuse by investigating and prosecuting a prolific prescription opiate diversion and distribution enterprise that was operating throughout Colorado and into Oklahoma. SPU collaborated with the DEA and indicted more than a dozen individuals, including a core group of career criminals and a pharmacist who was integral to the enterprise diverting Oxycodone onto the streets via the black market
- Operation Blowing in the Windy City:* Fourteen defendants, Led by Conley Hoskins, who committed a sophisticated tax and securities fraud scheme that centered on the manipulation of the medical marijuana industry as it existed prior to 2013, fourteen defendants were indicted. The leaders of this scheme were charged under the Colorado Organized Crime Control Act (COCCA) and are being prosecuted in Jefferson County District Court.
- Operation Monty Hall:* This nine-defendant enterprise committed a sophisticated short-sale mortgage fraud scheme throughout the metro Denver area. The Unit in conjunction with the Colorado Bureau of Investigation, the Office of Inspector General for the United States Department of HUD, the Office of Inspector General for the United States FHFA and the Colorado Department of Regulatory Agencies, jointly collaborated to aggressively investigate and prosecute this organization.
- People v. Carter Lord:* Carter Lord was a deputy coroner in Douglas County and in 2013 was convicted of embezzlement and forgery after a jury trial in Douglas County District Court. Lord took three guns that had been used by suicide victims, forged documents stating the guns had been destroyed, then sold one gun and kept the other two to sell at his own gun shop in Sedalia, CO.

Peace Officer Standards and Training Board

The Colorado Peace Officer Standards and Training Board (POST) manages the training and certification of approximately 16,000 active and reserve peace officers who are appointed to Colorado law enforcement agencies, in addition to managing 27 certified peace officer training academies and approximately \$2.2 million dollars in training grants. POST currently consists of six employees, 59 subject matter experts, and 20 appointed POST Board members. Ten of the eleven training regions also have an advisory board for

their region and there are more than 100 training advisory board members.

The POST Board is composed of 20 appointed members, of whom three are statutory members: the Attorney General (chairperson); the FBI Special Agent in Charge of the Denver Division of the Federal Bureau of Investigation; and the Executive Director of the Colorado Department of Public Safety. Seventeen members are appointed to three-year terms by the governor and include one local government representative, one member of the general public, six active sheriffs, six active chiefs of police, and three line-level peace officers serving at the rank of sergeant or below. The POST staff is divided into several different functions, including the Certifications Unit and the Academies Unit.

The POST training grant awards are funded by statute. Senate Bill 03-103 was enacted to establish a funding source for peace officer training throughout the state through the POST Board Cash Fund. Revenue for the fund is primarily derived from a fee on motor vehicle registrations. A statutory cash fund provides training programs for peace officers, especially those in rural and smaller jurisdictions that have limited resources due to their size or location. The mission and goals of the Board has always been to set priorities to ensure monies are awarded to assist the smaller and rural agencies to develop and receive training that they might not be able to afford but need in order to maintain or improve the proficiencies of their peace officers.

Key achievements in 2013 include;

Strategic Planning Process: The Board went through a strategic planning process. It identified priorities and designed a strategic plan for the next several years. Those priorities are: increase POST funding to better serve law enforcement training; develop a mandatory in-service training program; identify different levels for reserve officers and appropriate basic training for each level; develop reserve academy instructor qualifications and in-service training requirements; increase POST's ability to assist small agencies with priority training; and develop a standardized lesson plan for the Basic Academy.

Grant Funding: The POST Board awarded \$1,562,959 dollars in grant funds to ten POST-designated law enforcement training regions throughout the state. In addition, POST provided \$612,221 in grant funds for the development and delivery of new, specialized law enforcement curricula. \$77,000 in grant funds was provided to the San Luis Valley Training Foundation to acquire a gun range for rural peace officer training and approximately \$90,000 to the Central Mountain Training Region to purchase a shooting simulator for peace officer training in rural communities. POST received funding requests totaling \$2,629,639 for this fiscal year. Approximately 66% of the funding requested was awarded.

Prioritized Rural Law Enforcement Funding: During the 2012-2013 fiscal year grant cycle, only 41% of grant funds awarded by the POST Board went to rural law enforcement jurisdictions. During this fiscal year, POST staff recommended the

POST Board prioritize funding for rural communities and awarded 66% of the grant funds to rural law enforcement. Additionally, POST mandated that all training regions conduct a formal law enforcement training needs assessment of their regions. This procedure was put into place by POST to ensure that funds address the most critical training needs as a priority.

Certifications: The Unit issued 1,216 peace officer certifications, processed 20 felony certification revocations and 19 misdemeanor revocations. The Unit granted 54 provisional certifications and 23 reserve certifications. Statewide, 32 POST certification tests were completed, six skills tests, and 12 office. POST continues efforts to develop an on-line testing model for the POST certification exam.

The Academies Unit conducted 42 basic academy classes, two reserve academy classes, two lateral academy classes, two refresher academy classes and nine skills instructor programs coordinated across the 27 POST-approved academies in Colorado. In addition, 20 academy and program inspections were conducted all of which were found to be in compliance.

The Training Unit reviewed and approved 149 training courses. More than 9,000 peace officers have obtained specialized training to improve their proficiency, safety and performance during the reporting period. The POST grant program improved their efficiency and increased their effectiveness by developing and providing training for training regions and training providers,

conducting grant workshops, and providing training to new applicants. POST also implemented written standardized grant procedures and rules, standardized reporting forms, and reimbursement processes. To date, every region and provider has received training from POST on the administration of their POST grant.

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 challenge their criminal convictions in the Colorado and federal appellate courts.

Hundreds of prosecutors do felony trial work in the district courts; the Attorney General's Appellate Division has 32 full-time and four half-time attorneys supported by three staff members to respond to all of the defense appeals generated by those cases. Cases range from relatively minor sentencing and postconviction appeals to complicated white collar crime, homicide, child abuse, sexual assault, and death penalty litigation.

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. 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 impact only the defendants and the victims directly involved, any given case may result in new published law that has a significant impact on law enforcement procedures; on procedures for criminal trials and sentencing hearings throughout the state;

on the State's Department of Corrections; or 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.

2013 Caseload

The Appellate Division opened 1,004 new appellate cases in calendar year 2013. These cases involved the following convictions:

- 644 assaults or sexual assaults against children
- 401 burglaries and thefts
- 268 homicides and attempted homicides
- 366 kidnappings and assaults
- 235 completed or attempted aggravated robberies
- 163 drug offenses
- 137 sexual assaults on adults
- 785 other offenses (primarily felonies)

In addition, these cases included 333 habitual offender sentence enhancement counts.

Of the 971 Appellate Division cases decided by the various appellate courts in 2013, Division attorneys won 91% of their cases. In managing the caseload, Appellate Division attorneys performed the following primary tasks:

Opening and Answer Briefs: Filed 985 opening briefs, answer briefs, and

answers to orders to show cause.

Oral Arguments: Appeared at 111 oral arguments to present the State's position and answer questions from 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 58 petitions for rehearing to try to correct matters that were wrongly decided by the courts.

Petitions for Certiorari: Asked the Colorado Supreme Court to conduct further review in 39 cases that would otherwise have an adverse impact on law enforcement.

Natural Resources & Environment Section

Attorneys in this Section work with client agencies to protect and improve the quality of Colorado's natural environment and to ensure intelligent use and development of the state's natural resources, including the protection of Colorado's interests in interstate water. The Section provides legal counsel and representation to the Colorado Department of Natural Resources on the regulation of mining, oil and gas, parks and wildlife, state lands, and water rights and to the Colorado Department of Public Health and Environment on the regulation of air quality, water quality, radiation control, and hazardous and solid waste management. The Section also advocates on behalf of the State Natural Resource Trustees and the State Energy Office.

Federal and Interstate Water

Key achievements in 2013 include:

- *U.S. Supreme Court Briefs:* Authored two friend of the court (amicus curiae) briefs in the U.S. Supreme Court. In Tarrant Regional Water District v. Herrmann, attorneys acted to protect the law of compact interpretation and disputed the position of the U.S. Solicitor General. In Alaska v. Jewell, attorneys sought to clarify and protect the state's interests in preserving the limits of the federal reserved water right doctrine.
- *Interstate Compacts:* Litigated to protect the state's interests in interstate compacts on the Rio

Grande River (Texas v. New Mexico and Colorado) and the Republican River (Kansas v. Nebraska and Colorado).

- *River Compacts:* Protected the state's interests in the Colorado River Compact and the Upper Colorado River Compact through an interim agreement to the United States-Mexico Water Treaty of 1944 among the Bureau of Reclamation, International Boundary and Water Commission, and seven Colorado River Basin States and helped negotiate drought contingency plans.
- *Groundwater Issues:* Assisted the State Engineer's Office in Water Division No. 3 to develop an appropriate groundwater model in anticipation of promulgating groundwater use rules which protect senior surface water rights and compact obligations.
- *Animas-La Plata:* Coordinated with interested stakeholders to develop a protocol for Animas-La Plata operations.
- *Navajo Nation Litigation:* Intervened for Colorado in the Navajo Nation litigation against the Secretary of the Interior on the operation of the Colorado River system.

Water Resources and Conservation

In 2013, attorneys:

- *South Platte River Flood:* Organized an in-house legal team to provide quick responses to the Department of Natural Resources, the Division of Water Resources

(DWR), and the Colorado Water Conservation Board (CWCB) regarding legal issues raised by the unprecedented flooding of the South Platte River. Also assisted the CWCB to provide 48 loans for water-related projects totaling more than \$25 million, including 24 loans to help with flood relief.

- *Groundwater Aquifers:* Obtained a favorable Colorado Supreme Court ruling upholding the State Engineer's rules for the determination of nontributary ground water aquifers relating to the administration of oil and gas wells.
- *Colorado River Cooperative Agreement:* Assisted state parties with the execution and implementation of the historic Colorado River Cooperative Agreement between Denver, Colorado Springs and numerous West Slope water users, including Denver's commitment to provide water for instream flows in the Fraser River in Grand County, and the successful execution of the Shoshone Outage Protocol Agreement for the cooperative operation of West Slope reservoirs for the benefit of endangered species in the Colorado River.
- *Water Rights Issues:* Resolved the vast majority of the outstanding protests to the Division Engineers' 2010 revised decennial water right abandonment lists in all seven water divisions. Also obtained favorable rulings on questions of law regarding changes of water rights, conditional water rights, and standards for the intervention of the State and Division

Engineers in water matters. In addition, advised the DWR and CWCB regarding proposed or potential legislation.

- *Instream Flow:* Successfully obtained instream flow decrees for the Colorado Water Conservation Board, including winning a constitutional challenge to the instream flow program now on appeal to the Colorado Supreme Court. Also, provided representation for more than 180 cases for the CWCB.
- *Surface Water Issues:* Assisted the Colorado Ground Water Commission in a hearing on whether water that recharges designated groundwater basins can be appropriated as surface water or whether it constitutes designated ground water. Successfully prosecuted enforcement actions against illegal surface and ground water diverters to protect vested water rights holders from injury.

State Trust Lands

Key accomplishments in 2013 include:

- *Acquisition and Disposition Matters:* Advised and assisted the State Board of Land Commissioners (SLB) with acquisition and disposition transactions involving approximately 5,000 acres and more than \$32 million.
- *Rocky Flats Wildlife Refuge:* Represented the SLB in a multi-party legal challenge on a transaction to convey trust property to the United States for

the expansion of the Rocky Flats Wildlife Refuge in return for approximately \$10 million to the trust.

- *SLB Commercial Properties:* Negotiated a property management agreement for SLB's commercial properties.
- *Lowry Bombing Range:* Advised the SLB on managing the lease of more than 20,000 acres for oil and gas development at the former Lowry Bombing Range which will generate \$137 million in bonus payments over a five-year period, plus royalties.
- *Hesperus Land Trust:* Assisted the SLB to negotiate an agreement with the board of trustees for Ft. Lewis College for the cooperative use of the Hesperus Trust land.
- *Colorado Springs Utilities:* Negotiated for the SLB the exchange and disposition of property with Colorado Springs Utilities for a future reservoir site realizing approximately \$12 million, and of the Roxborough property, realizing \$9.5 million.
- *Trespassing:* Advised SLB to stop a trespass upon the State Forest and prevent further damage to the property and timber resources.

State Wildlife and Park Lands

Noteworthy accomplishments in 2013:

- *Colorado Division of Parks and Wildlife:* Advised in the merger of the former Division of Parks and Outdoor Recreation and the Division of Wildlife into the new

Colorado Division of Parks and Wildlife (CPW) including the new Parks and Wildlife Commission. In addition, advised in the acquisition by CPW of more than \$12 million in real property interests, both fee title and conservation easements, that protect and preserve critical wildlife habitat and parks lands throughout Colorado.

- *Wildlife Habitat Issues:* Responded to the challenges posed to park and 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 and significant parks and outdoor recreation opportunities. Also advised CPW in the management and conservation of wildlife species listed or proposed for listing under the federal Endangered Species Act. In addition, advised CPW in the development and implementation of fish, wildlife and recreation mitigation plans for the storage reallocation project proposed for Chatfield Reservoir in the South Platte basin.
- *Bonny Reservoir:* Helped CPW to address the draining of Bonny Reservoir due to compliance issues with the Republican River Compact.
- *Licenses:* Successfully defended against a number of individual challenges to hunting and fishing license suspensions imposed by the Parks and Wildlife Commission.
- *Over the River:* Successfully defended against a state district court challenge to the former

Parks Board’s decision to authorize the temporary art display otherwise known as “Over the River” by the artists Christo and Jeanne-Claude.

- *Dome Rock*: Successfully defended against a challenge to the CPW’s use of a lot it owns in a mountain subdivision as an access point to Dome Rock State Wildlife Area.

Oil & Gas and Minerals

Key accomplishments from 2013 include:

- *Rulemakings*: Advised the Colorado Oil and Gas Conservation Commission (COGCC) and worked closely with both industry and environmental representatives regarding the enactment of three significant rulemakings on statewide groundwater sampling and monitoring, setbacks from occupied structures, and spill reporting.
- *Home Rule Litigation*: Initiated litigation against a home rule city arising out of its adoption of comprehensive oil and gas regulations that conflicted with the state regulatory scheme.
- *Ballot Initiative*: Represented the COGCC in litigation regarding the passage of a ballot initiative banning hydraulic fracturing.
- *Enforcement Matters*: Participated in COGCC enforcement efforts and negotiated settlements for unpermitted or illegal activities against numerous operators. Also assisted the COGCC to implement regulations regarding the

disclosure of chemicals used in oil and gas activities, including hydraulic fracturing fluids. In response to Executive Order D 2013-004, worked with COGCC staff to prepare comprehensive report and policy review on COGCC enforcement rules, policy and procedure.

- *Schwartzwalder Uranium*: Successfully implemented the terms of a settlement agreement at the Schwartzwalder Uranium mine site near Golden to address ongoing impacts to groundwater from the mine pool to achieve water quality standards.
- *Coal-Mine Settlement*: On behalf of the Mined Land Reclamation Board (MLRB) settled judicial review litigation concerning a large-scale coal mine operation and its post-mining reclamation plan related to Prime Farmland soil.
- *Enforcement Successes*: Assisted in the successful enforcement of an illegal, unpermitted gold mill that caused mercury and arsenic contamination. Aggressively pursued violations against the operator and obtained an order establishing a \$385,000 civil penalty and several corrective actions to cleanup the site. Successfully brought illegal mining enforcement actions against individual miners associated with Prospectors, a popular reality show that takes place in Colorado’s high country near Mount Antero and Lake George. Enforcement actions were brought against the show’s four main characters because none obtained the required permits to mine. Successfully prosecuted

numerous violators in administrative enforcement actions before the MLRB.

- *Lending Legal Expertise:* Advised the Division of Reclamation, Mining, and Safety (DRMS) on updates and revisions to many of its financial warranty and permit application/modification forms. Counseled DRMS Coal and Minerals Programs to develop an electronic permitting option for coal and hard rock mining operations.
- *Hard Rock and Coal Mining:* Defended DRMS in various litigation related to hard rock and coal mining operations currently pending before the district courts in Denver, La Plata, and Montrose counties.
- *Avalanche Help:* Assisted the Colorado Avalanche Information Center in preparation for litigation related to two skier fatalities resulting from avalanches.

Air, Land and Water Quality

In 2013 key accomplishments included:

- *Clean Air-Clean Jobs:* Defeated challenges to new regulations on the Clean Air-Clean Jobs Act.
- *Enforcement Issues:* Provided counsel to the Air Pollution Control Division (APCD) on several major program enforcement issues, including permit revocation procedures, expedited penalty procedures, credible evidence, and settlement appeals.

- *First of a Kind:* Represented the APCD in a yearlong stakeholder process to develop regulations for the oil and gas sector, including requirements that are the first in the country to make mandatory the inspection and repair of leaks that contribute to ozone and climate change.
- *Enforcement Actions:* Successfully prosecuted produced water disposal facility for several violations of the Air Pollution Prevention and Control Act, and secured an order shutting down facility until compliance is achieved.
- *APCD Representation:* Assisted APCD in reaching determinations on several penalty immunity claims and defended employees of the APCD against subpoenas issued by parties in civil litigation.

Water Quality/Radiation

Accomplishments from 2013 include:

- *CORA-Driven Lawsuits:* This Section was responsible for successfully defending three lawsuits regarding the Cotter Cañon City Uranium Mill stemming from Colorado Open Records Act requests.
- *Permitting Issues:* Assisted the Water Quality Control Division (WQCD) in revising the storm water general permit and in developing the pesticides general permit.

- *Insolvent Companies:* Continued to represent the WQCD on several drinking water violations by insolvent companies.
- *Policy and Regulation Assistance:* Provided the Water Quality Control Commission (WQCC) and WQCD with assistance in adopting the discharger specific variance policy and in the adoption of regulations including, arsenic, greywater, reclaimed water, drinking water revolving fund, Arkansas and Rio Grande Rivers standards, temporary modifications, and confined animal feeding operations.
- *Suncor Settlement:* Reached a settlement with Suncor Refinery over unpermitted discharges of petroleum products for WQCD.
- *Lead in the Water:* Represented the WQCD in resolving Denver Water's exceedance of the drinking water lead action level.
- *Wastewater Treatment Systems:* Represented the WQCD/WQCC and in a complete revision to both the on-site wastewater treatment system regulations and the drinking water regulations.
- *Standards:* Represented the WQCD/WQCC on the first site-specific groundwater standard.
- *Radioactivity:* Assisted the Radiation Control Program in revising its policy on technologically-enhanced naturally occurring radioactive material.
- *Drinking Water Settlements:* Settled violations of Colorado's drinking water regulations at several drinking water facilities throughout the state.
- *Clean Water Act:* Continued involvement in federal litigation in support of EPA's rule exempting water transfers from Clean Water Act permitting requirements. Also succeeded in overturning an unfavorable decision on an appeal of the WQCD's certification of Colorado Springs Utilities' Southern Delivery System water supply project under the Clean Water Act.
- *CDPHE Defense:* Continued to defend CDPHE in issuing the first conventional uranium mill license in the country in 25 years.
- *Uranium Mill Decontamination:* Continued legal efforts regarding the decontamination of two large uranium mills and in the implementation of nutrient regulations.
- *Dispute Resolution:* Represented the WQCD in the successful resolution of the dispute over the Barr Lake-Milton Reservoir Total Maximum Daily Load.

Hazardous and Solid Waste

Key cases and efforts included:

- *Dry Cleaning Lawsuit:* Sued to require the owner of a property with historic dry cleaning operations to take action to prevent dry cleaning solvents from continuing to migrate toward a residential neighborhood and to clean up the site.

- *Groundwater Contamination:* Counseled the Hazardous Materials & Waste Management Division (HMWMD) regarding regulatory flexibility options at low-threat groundwater contamination sites.
- *Petroleum Storage Tank Fund:* Assisted outside counsel on behalf of Petroleum Storage Tank Committee to recover \$34 million in a breach of contract, unjust enrichment and fraud claims arising from major oil companies' improper receipt of funds from the Petroleum Storage Tank Fund.
- *Contaminations Counseling:* Counseled the HMWMD regarding the development and implementation of new regulations on asbestos- contaminated soil, electronics waste, recycling waste tires, and waste grease.
- *Enforcement Matters:* Prosecuted solid waste enforcement orders that successfully obtained cleanup of illegally disposed asbestos-containing materials at the West Elbert County Landfill, RTD's light rail corridors, and the Denver Federal Center. Also handled enforcement of multi-Division claims relating to a major petroleum release at the Suncor Refinery in Commerce City to prevent additional adverse impacts on Sand Creek, the South Platte River, and workers at the Denver Metro Waste Water and Republic Paperboard Industries properties. In addition, continued to improve long-term protectiveness of environmental remediation projects in the state by counseling and training the CDPHE to effectively implement Colorado's unique institutional controls statute.
- *Lowry Air Force Base:* Negotiated settlement on behalf of CDPHE for solid waste enforcement actions for mishandling of asbestos contaminated soils during a municipal park renovation project adjacent to a residential area.
- Counseled the Department of Public Health and Environment on proposed residential redevelopment of a military municipal and industrial landfill at Lowry Air Force Base and continue to assist the property owners in environmental compliance requirements.
- *Dry Cleaner Lawsuit:* Resolved a dry cleaner law suit resulting in continued remediation of a Boulder property in order to minimize downgradient migration of PCE.
- *Missile Test Site:* Secured institutional controls in the form of environmental covenants protecting exposure to contaminated groundwater at the former Air Force PJKS missile test site.
- *Meth Cleanup:* Counseled HMWMD staff in drafting regulations for certification of individuals involved in cleanup of methamphetamine-contaminated properties.
- *Waste Tire Illegalities:* Resolved cases against waste tire hauler/processor with chronic violations at three separate locations in the state, including

securing financial assurance and a penalty and finalizing cleanup of an illegal processing site.

- *Natural Gas Liquids Spill:* Brought Colorado Hazardous Waste Act administrative action against facility for spill of natural gas liquids adjacent to a stream draining into the Colorado River.

Natural Resource Damages, Land Cleanup and Restoration

In 2013 the section:

- *Lowry Landfill Superfund Site:* Continued work to disburse settlement funds received for injuries to groundwater at the Lowry Landfill Superfund Site.
- *Oil Pollutions Act and Clean Water Act:* Settled Colorado's first natural resource damages (NRDs) case under the Oil Pollution Act and Clean Water Act (instead of CERCLA). After conducting a scientific evaluation of the oil's impact of Sand Creek and the South Platte River, a \$ 1.4 million settlement awaits federal district court approval.
- *Standards Metal Company:* Participated with federal agencies in pursuing insurers of the Standard Metals Company for NRDs caused by mining operations near Crested Butte and Silverton.
- *Superfund Sites:* Worked with federal trustees to continue restoration projects for the Lake County California Gulch Superfund site, including work on stream restoration, fencing to protect stream areas, noxious weed control, land acquisitions, irrigated pasture revegetation and wetland enhancement. Also, counseled the HMWMD on the Clear Creek/Central City Superfund Site, which required the state's first application for a water right to set an in-stream flow protective of the fish in North Fork of Clear Creek.
- *Rocky Mountain Arsenal:* Continued to administer \$10 million in Rocky Mountain Arsenal NRDs by working with community groups and non-profits to develop integrated natural resource restoration projects in the Denver Metro area worth more than \$30 million.
- *Terrace Irrigation Spillway:* Counseled Trustees and HMWMD regarding contracting and construction of Terrace Irrigation Spillway replacement project which allows restoration of Alamosa River.
- *Rocky Flats:* Defended an appeal upholding a land exchange at Rocky Flats that added more than 700 acres of land to the Rocky Flats National Wildlife Refuge.
- *Gateway Spill:* Worked with federal trustees to establish a funding source for pre-assessment of the potential NRDs resulting from the West Creek tanker spill near Gateway.

State Services Section

Human Services Unit

The Unit provides legal representation to the Colorado Department of Human Services, including the Division of Youth Corrections, Division of Development Disabilities, Child Support Enforcement, State Nursing Homes, Regional Centers, two State Mental Health Hospitals, Child Care Licensing, and the Division of Child Welfare.

The Unit received the following favorable outcomes during 2013:

- *Federal Appeal:* Successfully defended the State Department in a federal appeal against the U.S. Department of Health and Human Services, involving disallowance of a claim for approximately \$2.4 million in federal participation dollars. Informal resolution was not successful so our Unit briefed the matter and the USDHHS reversed their decision based upon the brief. Colorado child support will be able to collect the \$2.4 million from the federal government.
- *Ineligible Beneficiary:* Reached a favorable settlement in a case involving a demand for benefits by an individual whose situation made her ineligible. The plaintiff was seeking damages, injunctive relief, and reinstatement of Medicaid waiver benefits. Attorneys for the Human Services Unit and the Health Care Unit worked together to craft a settlement that benefitted the disabled individual without violating eligibility requirements.
- *Child Care Center Licensing:* Negotiated stipulations with a large national child care corporation to resolve child care center licensing concerns where facilities were not adequately supervising children in care and not properly reporting child abuse. Settlements resulted in the collection of \$20,800 in fines and changes in the business practice and culture of the child care centers.
- *Real Estate Collection:* Represented the State Mental Health Institute in Pueblo to collect the costs of care from an individual's estate, resulting in a payment of \$53,000 back to the State.
- *Youth Corrections Transfer:* Represented the Division of Youth Corrections to transfer an individual to adult jail where the district attorney direct filed the case. The Division was successful in arguing that although the juvenile was under 18, he belonged in the adult jail due to the egregious nature of the crime and the difference between adult and juvenile facilities.
- *Sanity Evaluations:* Assisted the Colorado Mental Health Institute in Pueblo with two sanity evaluations and requests for records in two death penalty cases.
- *CBMS:* Continue to defend the state in ongoing litigation involving CBMS.
- *DHS:* Represented the Department of Human Services in 74 child abuse and neglect administrative

appeals. Also represented DHS in 32 child care licensing cases, including 8 summary suspensions of licenses where providers presented a threat to the health and safety of children 2 injunctions where persons were providing care without a license and refused to cease care. In addition represented DHS Division of Youth Corrections in 34 district court cases regarding placement, parole or extensions of commitment of juveniles. Additionally, the Unit defends against subpoenas for records or provides legal advice on requests for records or subpoenas for testimony weekly.

- Defended actions for judicial review and the final agency decisions of the Office of Appeals in 12 cases in district court.

Education Unit

The Education Unit advises all of state's public colleges and universities, and the community college system, on a wide range of state and federal compliance issues, board governance, and transactional matters. In addition, the Unit represents the State Board of Education and the Department of Education on a wide variety of issues, including charter school appeals, general policy questions, and in the prosecution of teacher licensure cases. The Unit provides general legal advice to the Colorado State Charter School Institute, the BEST (Building Excellent Schools Today) Board, and the Department of Higher Education, including the Division of Private Occupational Schools, the Colorado Historical Society, and the

Commission on Higher Education. The Unit regularly defends state education laws and the system of public school finance against constitutional challenges.

During 2013, the Unit:

- *Lobato*: Successfully defended the constitutionality of the State's Public School Finance System in the *Lobato* litigation. After seven years of litigation, and two trips to the Colorado Supreme Court, in May the Colorado Supreme Court found that the public school finance system did not violate the Colorado Constitution.
- *Douglas County Certificate Pilot Program*: Successfully defended the State Board of Education and the Colorado Department of Education in a constitutional and statutory challenge to the Douglas County Option Certificate Pilot Program. In February, the Court of Appeals issued a ruling in favor of the Department of Education and Douglas County School District by overturning the district court's permanent injunction against the pilot program.
- *Colorado School of Mines*: Represented the Colorado School of Mines in cost recovery efforts for environmental contamination on its campus, obtained final approval of a consent decree with the United States and most other major responsible parties recovering nearly \$11,000,000, including \$7,755,000 for past response costs appropriated by the General Assembly between April 1994 and February 1995 for site cleanup. Continued successful negotiations

with as-yet non-settling responsible parties.

- *Statutory Duties:* Represented the State Board of Education in its general supervision over public schools and the Department of Education in execution of its statutory duties, including open records and open meetings issues, rulemaking, personnel issues, charter school appeals, litigation, transactional matters and general legal advice.
- *Building Excellent Schools Today:* Advised the Capital Construction Assistance Board in general governance matters regarding administration of the Building Excellent Schools Today program which has completed six rounds of BEST Lease Purchase Financing totaling \$836,470,000 for 46 K-12 school construction projects.
- *Disciplinary Charges:* Prosecuted disciplinary charges against educator license holders and applicants who violate statutory requirements on behalf of the State Board of Education. Disciplinary actions included charges of sexual misconduct and child abuse.
- *State Charter Schools:* Represented the Charter School Institute in general governance matters regarding approving and overseeing State charter schools, including public records and open meetings issues, policy development, rulemaking, applications, renewals, closures, appeals, transactions and general legal advice.
- *Auraria Higher Education Center:* Represented the state's public institutions of higher education, including the community colleges and the Auraria Higher Education Center, in general governance matters, including open records and open meetings issues, Board representation, policy development, faculty dismissal hearings, personnel issues, state and federal compliance issues, student discipline issues, environmental issues, litigation, transactions and general legal advice.
- *CORA and OML:* Represented the Colorado Higher Education Insurance Benefits Alliance Trust in general governance matters, including open records and open meetings issues, policy development, trust amendments, employee benefit issues, transactions and general legal advice. Also represented the Private Occupational School Board in general governance matters including open records and open meetings issues, rulemaking, refund disputes, illegal schools, litigation, transactions and general legal advice.
- *Higher Ed:* Provided legal advice to the Department of Higher Education, Division of Private Occupational Schools and prosecuted disciplinary actions against applicants and holders of certificates to operate private occupational schools that violate statutory requirements and engage in deceptive trade practices.
- *Colorado Historical Society:* Provided legal advice to the

Colorado Historical Society in support of their mission to collect, preserve and interpret the history of Colorado and the West and carry out historic preservation and educational activities and programs authorized by statute or rule. Provided general legal advice to the Society, the State Historic Preservation Officer, the Office the State Archaeologist, and the State Historic Fund, on a wide range of matters including transactional issues associated with operation of the new Colorado state museum and regional museums.

Health Care Unit

During 2013, attorneys:

- *Health Care Policy and Financing:* Assisted the Department of Health Care Policy and Financing (HCPF) in recovering Medicaid overpayments from providers through settlement negotiations and litigation.
- Also assisted HCPF in recovering funds from liable third parties in personal injury actions, including defending HCPF in litigation challenging HCPF's ability to recover the full amount of Medicaid funds expended.
- Obtained a favorable Court of Appeals decision affirming HCPF's determination that a Medicaid applicant could not avoid the transfer without fair consideration penalty period by transferring funds to heirs via a single premium life insurance policy.
- Successfully defended HCPF in an action seeking a preliminary injunction challenging the award of a contract to the winning bidder. The district court's decision clarified the limited remedies allowed under the procurement code.
- Assisted HCPF with complex nursing facility rate appeals.
- Continued to defend HCPF in the dismissal of a federal law suit brought under the Americans with Disabilities Act challenging Medicaid program rules.
- Continued to defend an action regarding the operation of the Colorado Benefits Management System. Assisted HCPF with improvements to the system that have resulted in better processing of applications and benefits operation.
- Assisted HCPF with responding to and defending against deferrals and disallowances issued by CMS.
- Provided assistance to HCPF defending against the use of trusts to shield assets that do not comply with state and federal Medicaid trust requirements.
- Provided numerous legal opinions and general legal advice to HCPF, including issues related to the implementation of the Affordable Care Act.
- Provided legal review of numerous proposed regulations and provided legal assistance to program staff, the Medical Services Board, and the Board of Health during public

rulemaking hearings.

- *Colorado Department of Public Health and Environment:* Represented the Colorado Department of Public Health and Environment (CDPHE) in numerous medical marijuana related matters, including defending against subpoenas to produce confidential information and providing general legal advice related to the administration of the Registry.
- Defended CDPHE in administrative hearings challenging the imposition of fines and sanctions assessed on assisted living facilities where patients' well-being was at risk; and assisted with drafting and issuing conditional licenses for such facilities.
- Assisted CDPHE in revoking or suspending EMT's licenses when public safety was at risk.
- Successfully defended district court CORA action seeking documents protected by the deliberative process privilege .
- Defended against subpoenas seeking confidential information and testimony related to health facility surveys, disease control investigations, child fatality review documents, vital records, the toxicology lab, and investigations from CDPHE's HIV/disease control records.
- Successfully obtained a public health order in district court in order to prevent the transmission of HIV and other sexually transmitted diseases against a

high risk and non-compliant individual.

- Provided ongoing assistance and advice to CDPHE during several public health investigations.
- Provided numerous legal opinions and general legal advice to CDPHE on a wide variety of public health matters.

Labor/Personnel

Department of Labor and Employment
 Department of Personnel and Administration
 Board of Assessment Appeals

During 2013, the Labor/Personnel/BAA Unit opened 67 cases to force employer compliance with mandatory workers' compensation insurance statutes. Unit attorneys closed 56 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 unit collected \$20,980 in settlements and fines, and sent \$1,439,105 in fines to collection.

In 2013, attorneys also:

- *Case Load:* Opened 25 cases, filed 16 briefs, and participated in 4 oral arguments in appeals for the Industrial Claims Appeals Office. Opened 7 cases and closed 21 cases in petroleum storage tank clean-up reimbursement protests for the Division of Oil and Public Safety. Opened 9 enforcement cases and

closed 11 enforcement cases for the Division of Oil and Public Safety.

- *Subpoenas*: Handled 28 subpoenas on behalf of the Division of Workers' Compensation, the Division of Unemployment Insurance, and the Department of Personnel and Administration.
- *Rule Opinions*: Completed 29 rule opinions for the Department of Labor and Employment, the Department of Personnel and Administration, and the Board of Assessment Appeals.
- Handled 16 miscellaneous and subpoena enforcement cases for the Division of Unemployment Insurance, including filing 2 appellate briefs.
- Handled 3 miscellaneous cases for the Division of Workers' Compensation.
- Handled 8 miscellaneous cases for the Department of Personnel and Administration, including filing 2 appellate briefs.
- Opened 8 cases, and filed 3 briefs in appeals for the Board of Assessment Appeals.
- Settled 2 conflicts cases before the State Personnel Board, including participating in 1 oral argument and filing 1 appellate brief, and won one conflicts case on a summary judgment motion.
- *Office of Information Technology*: Handled a contract with CGI Technologies Solutions and OIT for COFRS II. Modernization contract and subsequent funding shortfall

(\$78,631,928.79 over 12 years). Also handled a contract between OIT and SIPA for Google email provider services (\$10,562,000.00 over 3+ years).

- *Colorado Department of Transportation*: Worked with CDOT SAP Contract amendment for CDOT enterprise system update.
- *WyCAN*: Negotiated a contract for the WyCAN multistate consortium procurement by the States of Wyoming, Colorado, Arizona, and North Dakota for an unemployment insurance tax and benefit system (\$110,860,000 over four years).
- *Colorado Parks and Wildlife*: Worked on a Colorado Parks and Wildlife contract with Active for internet system for the sale of wildlife licenses, state parks passes, vehicle registrations, and other wildlife and parks related products (processes approximately \$75 million annually in hunting and fishing license sales and approximately \$35 million annually in the sale of parks passes over a maximum period of 12 years).
- *Department of Local Affairs*: Handled a DOLA Division of Housing Contract with Colorado Coalition for the Homeless for a residential supportive community at the Ft. Lyon facility.

Public Officials Unit

During 2013, attorneys in the Public Officials Unit:

- *Safeguarding Consumer Complaints:* Successfully represented the Attorney General in a state court action challenging his discretion to deem complaints against businesses submitted to his office by consumers as “non-public records” for purposes of the Colorado Open Records Act.
- *Gun Law Challenges:* Represented the Governor in a federal court action challenging the constitutionality of state laws limiting large capacity ammunition magazines and requiring criminal background checks to be completed for private firearm transfers. Also represented the Governor in a state court action challenging the constitutionality of state laws limiting large capacity ammunition magazines and requiring criminal background checks to be completed for private firearm transfers.
- *Supervision of Nurse Anesthetists:* Represented the Governor in a state court appeal of an action challenging his determination that state law does not require physician-supervision of certified registered nurse anesthetists.
- *RTA:* Represented the Economic Development Commission in a state court action challenging its approval of a Regional Tourism Act application.
- *Vendor Contract Breach:* Represented the Office of Film, Television, & Media in a breach of contract dispute with a vendor.
- *Secretary of State’s Office:* Represented the Secretary of State in several state court actions related to the recalls of two state senators who voted in favor of state laws limiting large capacity ammunition magazines and requiring criminal background checks to be completed for private firearm transfers.

Also represented the Secretary of State in state court appeals regarding his authority to promulgate certain administrative regulations governing campaign finance disclosure requirements.

Represented the Secretary of State and the Governor in a federal court appeal of an action challenging the constitutionality of state campaign contribution limits for unaffiliated, write-in candidates.

Likewise, represented the Secretary of State in several state court actions related to the conduct of the November 2013 Coordinated Election.

Represented the Secretary of State in a federal court appeal of a lawsuit claiming a federal constitutional right to absolute ballot secrecy.

- *State Treasurer*: Represented the State Treasurer in state court of appeals regarding an action seeking to enforce his right to obtain records from the Colorado Public Employees Retirement Association. Also handled escheat and unclaimed property matters for the State Treasurer.
- *Ft. Lyon Homeless Housing Program*: Advised and represented the Division of Housing on the implementation of a supportive housing program for homeless individuals at Fort Lyon.
- *Defunct Special Districts*: Advised and represented the Division of Local Government in proceedings to administratively dissolve defunct special districts.
- *OEDIT*: Advised and represented the Office of Economic Development and International Trade and the Economic Development Commission in the fulfillment of their duties.
- *Software Licensing*: Advised and represented the Office of Information Technology regarding certain software licensing disputes.
- *Judicial*: Advised and represented the Judicial Department.

Public Utilities Commission Unit

The Public Utilities Commission Unit provides legal advice to the Commissioners and their advisory staff members on the electricity, gas, telecommunications, transportation, and other regulated public utility matters before the Commission. This Unit evaluates the law supporting the public interest and as argued by parties and participants in adjudications, rulemakings, and other administrative proceedings. After the Commission deliberates and decides a matter, this Unit drafts and reviews written decisions constituting the official action of the Commission. This Unit also represents the Commission in judicial appeals of its decisions and advises on proposed legislation and matters before federal regulatory agencies.

During 2013, attorneys in the PUC Unit advised and supported the following achievements of the Commission:

- *Public Service Electric Resource Plan*: The Commission completed the second phase of Public Service's plan for acquiring additional resources, including generation through renewable resources and new, clean technologies. The Phase II order authorized the acquisition of a designated combination of resources to meet projected capacity needs, in addition to the procurement of 450 MW of additional wind resources at low bid prices occasioned by the extension of federal Production Tax Credits.

Black Hills Electric Resource Plan: The Commission approved a settlement submitted by Black Hills and other parties authorizing the construction of a 40 MW natural gas-fired generation unit to effectuate Black Hills' emissions plan under Colorado's Clean Air Clean Jobs Act. The Commission also approved the retirement of two generation units and the process by which Black Hills solicits electricity resources to meet a 42 MW need and for up to 60 MW of renewable energy resources.

The City of Boulder's Municipalization of Electricity Services: The Commission issued declaratory rulings clarifying its regulatory authority over electricity services the City of Boulder may provide as a municipal utility to customers located outside city limits in unincorporated Boulder County. The Commission also directed Boulder to apply for approval of the division of certain assets used by Public Service to transmit and distribute electricity to customers both inside and outside Boulder's municipal territory.

La Plata Electric Association v. Tri-State Generation and Transmission Association, Inc.: The Commission, denying challenges under the dormant Commerce Clause, asserted jurisdiction over whether the wholesale rate design charged by Tri-State to its member retail cooperatives comports with Colorado law and policy. The merits of this case will be decided in 2014.

Public Service Application to Construct New Steam Center: The Commission clarified that the provision of steam services constituted a public utility service subject to its jurisdiction. The Commission denied without prejudice Public Service's application to construct a \$29 million steam center in the Sun Valley neighborhood of Denver and to

implement a regulatory plan requiring natural gas customers to subsidize steam distribution costs. The Commission requested the company to file an analysis of options to construction of the proposed steam center and to survey customer preferences toward steam or alternative energy sources.

Senate Bill 252 and Renewable Energy Standards for Rural Cooperatives: Upon signing Senate Bill 252, which increased the required percentages of renewable energy generated by rural cooperatives, the Governor appointed an interim committee to review the bill and propose alternative legislative measures. The PUC and the Attorney General were appointed to the committee as non-voting members, and the PUC Unit participated in these sessions and advised the Commission.

Competition and High Cost Fund Adjudications: The Commission continued its adjudication to reform regulatory treatment of basic telephone services in geographic areas of effective competition and to examine the need for distribution of subsidies under to the state high cost fund.

Switched Access Discrimination Case: The Commission prevailed in a district court challenge to its decision granting a formal complaint brought by CenturyLink against multiple competitive local exchange carriers alleging undue discrimination in the provision of switched access services. The district court upheld the Commission's application of the statutes of limitation and the doctrine of equitable tolling, its interpretation of statutes prohibiting discrimination in the provision of switched access services, and its ability to order reparations.

Telecom Reform Act: The Unit advised the Commission on proposed legislation to revise the telecommunications statutes addressing competition, the state high cost fund, and Commission authority over basic emergency telephone services.

Comprehensive Rulemaking: The Commission adopted new rules reforming regulations governing taxicab, luxury limousine, and towing services. The new rules accounted for innovative forms of brokering and ordering luxury limousine services and relaxed the requirements to allow limousines to offer estimates and to charge on the basis of time and distance.

Practice and Procedure Rulemaking: The Commission issued a comprehensive set of new practice and procedure rules. These rules reform and clarify a multitude of procedures for practicing before the PUC, including ex parte rules, intervention, electronic filings, public comment, show cause proceedings, confidentiality, and information privacy.

Civil Litigation and Employment Law Section

The Colorado Attorney General's Office, through the Civil Litigation and Employment Law Section, defends all state agencies, institutions of higher education (except the University of Colorado) and employees sued in state and federal court for personal injuries, property damage, employment discrimination, and constitutional violations. The Section also represents state agencies and institutions of higher education in personnel matters in front of the State Personnel Board and appellate courts, brings administrative cases against private parties on behalf of the Colorado Civil Rights Commission, and advises and represents state agencies and institutions of higher education in workers' compensation matters.

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 Colorado Department of Public Safety, the Division of Risk Management, the Colorado Civil Rights Division, the Special Funds Unit of the Division of Workers' Compensation, and the employees of those agencies. The Section attorneys provide advice and training to all state agencies and institutions of higher education on a myriad of employment, workers' compensation and general liability issues.

The 41 attorneys and 17 support staff make up the six units in the Section. The Section handled more than 800 new cases and reviewed more than 375 contracts in 2013.

Corrections and Public Safety Unit

The Corrections and Public Safety Unit provides representation to the Colorado Department of Corrections, the Colorado Parole Board, and the various division of the Colorado Department of Public Safety including the Colorado State Patrol, the Colorado Bureau of Investigation, the Division of Criminal Justice, the Division of Fire Prevention and Control, and the Division of Homeland Security and Emergency Management. The Unit defends inmate lawsuits involving various issues, including constitutional rights, time computation, prison discipline proceedings, *habeas corpus* petitions, parole and contract-related matters. The Unit also provides representation to all divisions the Department of Public Safety. Unit lawyers provide general legal advice to the Department of Corrections, the Parole Board, the Colorado State Patrol, the Colorado Bureau of Investigation, the Division of Criminal Justice, the Division of Fire Prevention and Control, and the Division of Homeland Security and Emergency Management on a daily basis on matters such as open records requests, environmental issues, sentencing issues, internal discipline, and procedural matters, compliance issues, and administrative regulations.

In 2013, the Unit:

- Opened 270 new cases.
- Obtained favorable rulings in 195 matters brought by inmates or their attorneys and unfavorable rulings in only 11 cases.
- Obtained favorable rulings from appellate courts in 27 cases.
- Obtained favorable federal jury and bench verdicts in two out of

two cases that went to trial.

- Obtained a mixed verdict in one state court case that went to trial.
- Obtained favorable rulings in multiple hearings held in state court.
- Settled 3 cases for \$57,000. (One case settled for \$50,000; another for \$5,500, and one for \$1,500). While inmates generally seek unspecified damages in their complaints, specified damage requests were in excess of \$25,000,000.

Employment/Personnel and Civil Rights Unit

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

In 2013, the Unit:

- *Employment and Fair Housing:* Negotiated more than \$45,000.00 in settlement payments to private citizens in employment and fair housing cases. The settlements included provisions requiring that private employers and housing providers receive mandatory discrimination training, policy changes and discrimination reporting.
- *State Personnel Board:* Defended cases before the State Personnel Board and the Colorado Court of Appeals, including 221 new cases. Won 73% of all mandatory hearing cases and obtained denials of hearings in 67% of all discretionary hearing cases that were briefed.
- *Civil Rights Commission:* Prosecuted 10 cases that were noticed for hearing by the Colorado Civil Rights Commission at the Office of Administrative Courts or in state district court.
- *Cert:* Won both cases argued before the Court of Appeals and successfully opposed a petition for certiorari before the Colorado Supreme Court.
- *Advice & Training:* Provided daily front-end employment advice and consultation to state agencies and institutions of higher education 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. Also

provided civil rights advice to the Colorado Civil Rights Division and represented the Division at Colorado Civil Rights Commission meetings.

Employment Tort Litigation Unit

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 regarding employment law issues to the state agencies and higher education institutions.

In 2013, the Unit:

- Defended cases filed in state and federal courts involving 70 claims for relief against state agencies, and 59 claims for relief against state employees and aggressively sought and obtained summary judgment of 11 claims.
- Won all three appellate cases that were decided during 2013.
- Settled three cases for a total of \$85,000, saving the State more than \$1,100,000.
- Created and presented training to numerous state agencies and to higher education institutions on the FLSA, supervisor training, and conducting investigations.

- Provided day-to-day advice to state agencies and higher education institutions, including managing non-classified employees' performance, responding to EEOC and CCRD Charges, complying with ADA, FMLA, and FLSA requirements, developing and implementing litigation hold policies, responding to Colorado Open Records Act requests, and drafting and reviewing proposed policies.

Tort Litigation Unit

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 2013, the Unit:

- Opened 122 new cases, including 48 conflict counsel cases and 7 cases in which attorney fees claims associated with 42 U.S.C. § 1983 cases seeking injunctive relief were monitored.
- *Lower North Fork Fire*: Continue to litigate the Lower North Fork litigation, in which we have interpleaded claims of homeowners and insurers for damages from the Lower North Fork fire in a lawsuit against Department of Public Safety.

- Convinced 9 plaintiffs to dismiss their complaints prior to motions to dismiss or before rulings on motions. Six more cases were dismissed by the courts, sua sponte.
- Filed 49 motions to dismiss, of which 38 have been granted or granted in part and 2 have been denied.
- Filed 10 motions for summary judgment, of which 8 were granted and 2 remain pending.
- Settled 23 damages claims, including 11 claims in the Lower North Fork litigation, for a total of \$4,578,255.80. Plaintiffs in these cases had sought damages totaling \$13,122,619.
- Settled attorney fees claims in 2 cases for \$1,015,000 on demands totaling \$1,117,765. In five cases, the courts awarded a total of \$90,620 in attorney fees, to be paid to the Risk Management Fund.
- Appeared in 17 appeals, prevailed in 6, and lost 1. Ten remain pending.

Petitions for certiorari in the U.S. Supreme Court were filed against us in 2 cases and the Court denied certiorari in both of them.

Settled the State's malpractice damages claim against a Missouri attorney for payment to the Risk Management Fund of \$32,000.

Transportation Unit

The Transportation Unit advises the Colorado Department of Transportation (CDOT) on a multitude of legal issues. The Unit prosecutes all condemnation actions, defends inverse condemnation actions and handles administrative actions. The Unit also handles administrative appeals involving regulation of access control, billboard location, and relocation benefits. Unit attorneys also deal with CDOT procurement matters and protests. The Unit represents two TABOR-exempt enterprises that are divisions of CDOT. The Unit advises CDOT in construction matters and represents the CDOT in construction disputes, claims 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 assist with the drafting, review, and revision of high risk CDOT contracts and all innovative road and bridge construction contracts. The Unit assists in rulemaking and approval or regulations. Unit attorneys serve as issuer counsel in public finance transactions. The attorneys also review proposed legislation affecting CDOT.

In 2013, the Unit:

- Represented CDOT in 15 new condemnation cases and continued to represent the agency in numerous on-going condemnation, access, relocation, billboard, inverse condemnation, and quiet title cases.
- Settled, or resolved by trial, 14 condemnation cases, saving the

state \$500,000.

- Reviewed approximately 375 contracts for CDOT with an average turnaround time of three and one-half days.
- Continued to provide legal guidance related to CDOT's two TABOR-exempt enterprises created by the FASTER legislation, Senate Bill 09-108.
- Successfully defended the Colorado Bridge Enterprise against litigation challenging the Bridge Enterprise's enterprise status.
- Continued to represent the Colorado High Performance Transportation Enterprise and a two members of the Unit spent a significant amount of time as part of the legal team representing the HPTE in negotiating the HPTE's first toll road concession agreement on US 36 between Denver and Boulder.
- Two members of the Unit continued to work with CDOT to analyze claims made by Union Pacific Railroad regarding expired leases of Union Pacific land in which state highways sit. The Unit worked diligently on this issue and reached positive resolutions for many parcels at issue.
- Two members of the Unit took a condemnation action related to a highway improvement project to jury trial in Jefferson County District Court and received a

favorable jury verdict. In this action, the CDOT appraiser valued the land at \$46,000. The landowner's appraiser valued the land at \$245,000 and the landowner valued the land at \$315,000. CDOT's offer of \$120,000 was rejected by the landowner during mediation. Following a two-day jury trial, which included a jury view of the property, the jury returned a verdict setting \$55,000 as the amount of compensation owed to the landowner.

Workers' Compensation Unit

The Workers' Compensation Unit defends state agencies and institutions of higher education in workers' compensation matters. The Unit manages litigation from inception through hearings and appeals, including fully contested claims, challenges to specific disability and medical benefits, penalty allegations, petitions to review, and cases with subrogation or employment law issues. The unit represents the Special Funds Unit of the Division of Workers' Compensation, and its Subsequent Injury Fund and Major Medical Insurance Fund. The attorneys provide day-to-day advice to the Special Funds Unit, Risk Management's Workers' Compensation Division, the state agencies, and to Broadspire, the state's third party administrator, regarding workers' compensation law, liability exposure and settlements.

Prior to the Unit's creation in August 2013, 100% of all state workers' compensation cases were assigned to outside counsel. Since the Unit was created, its attorneys have handled 67% of

the litigated cases, assigning only 33% to outside counsel. The Unit bills Risk Management's Workers' Compensation Division at a significantly lower rate than outside counsel. In cases where the workers' compensation claims have had an employment law component, the Unit's lawyers consulted with the employment personnel and employment tort lawyers regarding the state personnel rules and other idiosyncrasies of state employment.

The Unit's lawyers also monitored the files sent to outside counsel. Oversight of outside counsel has improved consistency in how the many state agencies respond to the same types of claims and situations. Also the Unit lawyers developed uniform reporting for outside counsel to heighten outside counsel's accountability to the AG's office and to improve the quality of the work.

Revenue and Utilities Section

The Revenue and Utilities Section provides general legal advice and representation to the Department of Revenue, the Litigation Staff of the Public Utilities Commission within the Department of Regulatory Agencies, and the Property Tax Administrator and Property Tax Division within the Department of Local Affairs (DOLA).

Revenue Unit

The Revenue Unit's attorneys advise and represent all of the Department of Revenue's business groups: taxation, enforcement, lottery, and motor vehicles. Unit attorneys also represent the Property Tax Administrator within the Department of Local Affairs and represent the State's interests in bankruptcy proceedings.

Taxation

The Department of Revenue's taxation divisions require extensive legal services to promote compliance with the tax laws, thereby protecting the interests of all taxpayers. Tax cases often are complex, involving disputed amounts in the millions of dollars. Unit attorneys provide informal guidance and opinions to the Department on a variety of complex legal questions and advise the Department in connection with the promulgation of rules. Unit attorneys also represent Revenue in litigation at administrative hearings, and in state and federal trial and appellate courts.

In 2013, the Unit:

- Represented Revenue in an appeal before the Colorado Supreme Court regarding the applicability of a manufacturing machinery sales tax exemption to the production of electricity.
- Prevailed in the Colorado Court of Appeals in a severance tax case denying a deduction for "Return on Investment."
- Defended the State's notice and reporting requirements for online and remotes sales for retailers who do not collect sales tax in an appeal to the 10th Circuit Court of Appeals.
- Prevailed in defending the scope of the State's tobacco product tax as applicable to blunt wraps.
- Prevailed in defending Revenue's sales tax assessment upon wind turbine components.

Bankruptcy

Unit attorneys represent the State's interests in numerous bankruptcy cases and involuntary seizures, resulting in recovery of sums of money that otherwise might not be collected. Unit attorneys are regularly called upon to determine whether the State's activities are consistent with the automatic stay while bankruptcy cases are pending, and whether taxes and other monies owed to the State remain collectible once a bankruptcy discharge has been granted. Unit attorneys also monitor tax compliance by businesses operating in Chapter 11.

Regulation and Licensure

Unit attorneys also represent Revenue's enforcement and lottery business groups and its boards, commissions and regulatory programs. These include the Colorado Limited Gaming Control Commission, Motor Vehicle Dealer Board, the Colorado Racing Commission, Liquor Enforcement Division, Marijuana Enforcement Division, and the Colorado Lottery.

In 2013, the Unit:

- Advised the Marijuana Enforcement Division, in connection with the promulgation of hundreds of pages of rules, provided guidance regarding complex and novel legal issues, and represented the Division in a variety of licensure matters.
- Assisted in the research and drafting of two formal Attorney General Opinions: one regarding the applicability of certain funding distributions to the State's district attorneys and another regarding the legality of Internet gaming in Colorado.
- Represented the Colorado Lottery in connection with a challenge to the Department's award of an online gaming system and services contract.
- Participated in, and advised the Motor Vehicle Dealer Board and the Auto Industry Division in connection with, a working group addressing electronic media and technology issues in advertising.
- Successfully defended the Colorado Racing Commission before the

Colorado Court of Appeals in three companion cases regarding the strict approach to the use of performance-enhancing drugs in race horses.

- Represented the Division of Motor Vehicles (DMV) in an appeal before the Colorado Supreme Court in two cases concerning the applicability of the exclusionary rule to driver's license revocation hearings.

Property Tax Administrator

Unit attorneys provide legal advice and litigation services to DOLA's Division of Property Taxation, led by the Property Tax Administrator (PTA). The Division coordinates and administers the implementation of property tax law throughout 64 counties in Colorado, and is responsible for the valuation of the operating plant and property of all public utilities doing business in Colorado. Unit attorneys represent the PTA in administrative hearings and litigation before the Board of Assessment Appeals (BAA) and the state district and appellate courts.

In 2013, the Unit:

- Defended the PTA's denial of a petition for abatement and refund in a case before the Court of Appeals concerning severed development rights in a condominium unit.
- Successfully appealed the BAA's decision in exemption cases concerning the YMCA camps in Larimer and Grand Counties.

- Prevailed before the Colorado Supreme Court in a case challenging the Division's method of valuation of public utilities on constitutional and statutory grounds.

Conservation Easement Tax Credit Unit

The Conservation Easement (CE) Tax Credit Unit attorneys represent the Department of Revenue in litigation of the denial of CE income tax credits. The Unit was created in 2011, following the passage of House Bill 11-1300, which established special procedures to facilitate the equitable and expeditious resolution of these disputes.

Unit attorneys have represented Revenue in 171 state district court cases (involving more than 500 CEs). 139 of those cases have since been settled, leaving 32 cases remaining. Unit attorneys represented Revenue this year in extensive and complex settlement negotiations, recovering over \$50 million in tax revenue owed to the State. In the vast majority of the cases that have settled, the expected recovery is 80%-100% of the tax owed. Penalties and interest have been waived in more than 95% percent of these cases, in accordance with the General Assembly's encouragement that Revenue waive penalties and interest for taxpayers who act in good faith to resolve their tax credit dispute prior to trial.

In 2013, the Unit:

- Prevailed after trial in defending Revenue's disallowance of CE tax credits and establishing that the taxpayers' claimed credit upon property in Otero County was invalid.
- Prevailed following a trial in Jefferson County in a case involving two CE donations that purportedly generated \$360,000 of state tax credits.
- Prevailed on summary judgment in a Bent County case involving approximately \$1.5 million of liability for tax, penalties and interest.
- Prevailed on summary judgment in a Teller County case where four CEs were held invalid because the donor and donee were permitted to extinguish the easements without court oversight, contrary to governing federal regulations.

Public Utilities Commission Litigation Unit

The Public Utilities Commission (PUC) regulates the rates, charges, services and facilities of public utilities within Colorado. The Public Utilities Litigation Unit primarily represents the litigation staff of the PUC. Unit attorneys appear before the Commission in litigated matters on behalf of the public interest to balance the need for fair utility rates for all consumers and the financial health of the utilities.

Fixed Utilities

Unit attorneys work to ensure that adequate and reliable gas, electric, telephone, and water and water/sewer services are provided at reasonable rates. Rate cases are complex and routinely involve many parties to the litigation.

Key cases from 2013 include:

- Represented trial staff in a proceeding on a utility's request to

increase natural gas rates over a three-year period using historical information as a basis for the proposed rates.

- Negotiated a settlement on behalf of Trial Staff which resulted in a return to the utility's electric customers of more than \$8 million.
- Represented trial staff in opposing a utility's application to build a \$26 million steam plant and collect a subsidy from natural gas ratepayers, which the Commission ultimately denied.
- Represented Trial Staff in a proceeding involving a utility's request to transfer \$26.2 million of renewable energy costs due to an accounting error.
- Negotiated a settlement on behalf of Trial Staff resulting in decreased natural gas rates, transparency regarding the new rates, and financial security to the utility.
- Represented Trial Staff in proceedings regarding changes to the Colorado High Cost Support Mechanism (CHCSM), which created a fund to promote the availability and affordability of universal telephone service within the State. One proceeding concerns whether certain areas in Colorado are Effective Competition Areas (ECAs), subject to reduced regulation with telecommunication providers operating in those areas no longer eligible to receive CHCSM funding. Unit attorneys also represent Trial Staff in a rulemaking proceeding to determine the standards under

which a telecommunications provider could still receive CHCSM funds in an ECA, and if so, how much those funds should be.

Transportation

Unit Attorneys represent the Transportation Section of the PUC and are responsible for: safety and insurance oversight of passenger carriers, household goods movers, and towing carriers that operate on a for-hire basis in Colorado; permitting of hazardous and nuclear materials carriers; and rate regulation of common and contract carriers.

In 2013, the Unit:

- Represented the Commission in a contempt proceeding in district court that resulted in a sentence of six months in jail for a children's activity bus operator for violating a previously issued permanent injunction.

Business and Licensing Section

The six units of the Business and Licensing Section provide legal advice and litigation services to several state agencies including the Department of Regulatory Agencies (DORA) and its divisions of Professions and Occupations, Banking, Civil Rights, Financial Services, Insurance, Real Estate and Securities. The Section also represents the Department of Agriculture, the State Personnel Board and the Independent Ethics Commission.

Real Estate Division

The 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 Mortgage Loan Originator Board.

Key outcomes in 2013 include:

- Successfully negotiated the revocation of a real estate broker's license and his company's license and imposition of a \$10,000 fine after uncovering evidence that the brokerage company was missing about \$60,000 of client/tenant security deposits. As part of the settlement, the broker was required to notify his clients of his unlawful behavior. The broker also admitted to converting funds of others without proper authorization, dishonest dealing and demonstrating unworthiness or incompetency to act as a real

estate broker.

- *Contract Violations*: Prevailed at trial against a licensed real estate broker who drafted a legal contract in violation of statute and regulations. The Administrative Law Judge (ALJ) issued an Initial Decision finding liability on all counts, issued a public censure, a fine of \$2,750 and a requirement to complete continuing education.
- Negotiated a stipulation with a licensee, who represented the seller in the sale of an assisted-living facility that was a two-part transaction: the sale of the home, and then the sale of the business. The broker drafted and negotiated the terms of an asset purchase agreement for the sale of the business. She conducted the sale of the property as a separate transaction failing to make the two transactions contingent upon the other. The sale of the home closed, but the sale of the business did not. As a result, the seller was forced to re-purchase her home for a significantly higher price. After extensive settlement negotiations, the licensee paid restitution to the seller and agreed to a settlement that included a fine, coursework, suspension, and a public censure.
- Aided the Real Estate Commission in reaching a settlement with a real estate broker, who failed to disclose significant structural and drainage defects when selling his own home. The licensee agreed to relinquish his license and have that relinquishment treated as a revocation, a public censure and a fine of \$5,500.

- Successfully prevailed at hearing in obtaining the revocation of a mortgage loan originator license from a licensee who pled guilty to criminal felony forgery.
- Favorably settled with a licensee who accepted \$30,000.00 in earnest money, but failed to deposit the money in a requisite escrow account and, without knowledge of the buyer, used it to fund the purchase of another unrelated property. A settlement was reached in which the licensee agreed to pay full restitution, agreed to a probationary license with supervision for five years, a fine of \$3,500.00, and a public censure.

Medical Unit

The Medical Unit provides legal representation to the state boards within the Department of Regulatory Agencies that regulate physicians, physician assistants, podiatrists, anesthesiologist assistants, and pharmacists. The Unit also represents the Healthcare Professions Profile Program. 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. Outside the healthcare field, the Unit additionally represents the Division of Financial Services and the Colorado Civil Rights Commission, also housed in the Department of Regulatory Agencies. Within the Department of Personnel Administration, the Unit represents the State Personnel Board.

Division of Financial Services

Unit attorneys represent the Division of Financial Services and the Financial Services Board which supervise 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 promulgation of rules and regulations, enforcement of corresponding state laws and regulations, involuntary liquidation, and any other emergency issues that may arise.

During 2013, attorneys representing the Division of Financial Services worked closely with the Commissioner of Financial Services and Financial Services Board in order to bring regulated entities into compliance with state laws.

Personnel Board

Counsel for the board worked closely with the Personnel Board and Program Director, providing legal advice and guidance on rulemaking following the passage of Constitutional Referendum “S.”

Colorado Civil Rights Commission

Unit attorneys continued to advise the Commission on the conduct of appeals of Director decisions pending before the Commission. Additionally, Unit attorneys assisted the Commission in handling public appeals for assistance. Unit attorneys provided legal advice and guidance on a rulemaking overhaul of all of the Commission’s procedural rules.

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.

Following the Court of Appeals decision in *Priem v. Board of Pharmacy*, Board attorneys represented the Board in administrative court and advised the Board concerning the rehabilitation statute, providing that a felony conviction is not an absolute bar to licensure. Board attorneys advised the Pharmacy Board and Division regarding changes proposed to Colorado's Prescription Drug Monitoring Program statute.

Colorado Medical Board

Counsel for the Medical Board successfully prosecuted and resolved several complex disciplinary actions against physicians who engaged in unprofessional conduct, including the provision of substandard care. Counsel for the board also litigated on behalf of the board before the Office of Administrative Courts, and continued to provide guidance and rulemaking advice in relation to professional review related legislation.

In 2013:

- In *Colorado Medical Board v. Rajadas, M.D.* Counsel for the Colorado Medical Board successfully tried the Board's case over five days, involving opinions from expert physicians concerning prescribing large doses of opioids for chronic pain. Following the hearing and a suspension Dr. Rajadas agreed to public discipline in the form of probation with practice monitoring, a documentation seminar and prescribing course.
- Board attorneys tried this case over four days at the Office of Administrative Courts in late 2012 concerning the care of Dr. Cruz-Martinez, a psychiatrist who was practicing inpatient, adult psychiatric care at Parkview Medical Center in Pueblo. The ALJ relied on the Board's expert opinion and found that the doctor provided substandard care through inadequate evaluation, conferral, and referral when treating a 25-year-old developmentally-disabled male with historical diagnoses of autism and a seizure disorder. The ALJ further recommended revocation of the physician's license to practice medicine. Through the exceptions appeal process following trial, the Board's attorneys successfully clarified the evidentiary standard applicable to establishing the standard of care in Medical Board cases.
- Board attorneys advised the Medical Board and Division regarding changes proposed to Colorado's Prescription Drug Monitoring Program statute.
- Board attorneys continue to prosecute multiple medical marijuana-related disciplinary matters for the board. These cases involve physicians the board alleges recommended medical marijuana without establishing a bona fide physician-patient relationship. Some of these matters are ongoing. However in, *Colorado Medical Board v. Camarata, M.D.* the case was

referred to the Colorado Medical Board due to the large number of medical marijuana certifications Dr. Camarata had performed. The Panel's expert determined that Dr. Camarata's certifying was excessive, and that his prescribing of other drugs fell below the standard of care. He agreed to public discipline in the form of a five-year probationary period with prescribing restrictions. The Stipulation provides for an evaluation and education at the Center for Personalized Education for Physicians and monitoring by a Quality Reviewer. Further, Dr. Camarata must work toward regaining his prescribing authority by completing a three-phase prescribing restriction.

Nursing and Dental Unit

The Nursing and Dental Unit provides legal representation to the state boards that regulate nurses, dentists, certified nurse aides, psychiatric technicians, nursing home administrators, surgical assistants and surgical technologists, physical therapists, direct entry midwives, audiologists, hearing aid providers, athletic trainers, the newly-formed naturopathic doctors registration program, and the Nurse Physician Advisory Task Force for Colorado Health Care.

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

In 2013:

- Counsel for the Board of Nursing resolved a large number of cases this year involving issues related to Advanced Practice Nursing, Registered Nurses, Licensed Practical Nurses and Certified Nurse Aides.
- Ms. Riesmeyer has a lengthy disciplinary history with the Board. In July Ms. Riesmeyer diverted several vials of Propofol from her place of employment. She was found unconscious in her car after self-injecting Propofol through a PICC line in her arm and had Tramadol in her purse. She was summarily suspended for this conduct and found not safe to practice with reasonable skill and safety. She agreed to relinquish her nursing license.
- In addition to general counsel representation at the Full Board Meetings and Panel Meetings, counsel for the board provided advice on issues including statutory construction regarding prescriptive authority and professional review of advanced practice nurses and advice on significant rulemaking.

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 and advice on rulemaking. Counsel also provided legal representation on disciplinary matters.

Key cases from 2013 include:

- Aragon-Herrera entered into an Interim Cessation of Practice Agreement in lieu of Summary Suspension for conduct that occurred while she was working as a nursing home administrator. She ultimately permanently relinquished her license to practice as a nursing home administrator.
- Sherry Thornburg, NHA: Thornburg faced felony and misdemeanor criminal charges, including burglary, theft, and identity theft related to her conduct while working as a nursing home administrator. Respondent admitted using cocaine at that time. She entered into an Interim Cessation of Practice Agreement, in lieu of Summary Suspension and agreed to relinquish her license to practice as a nursing home administrator.

Surgical Assistants and Surgical Technologists

Counsel worked closely with the Division Director in this Director model program and provided general counsel representation including providing advice on statutory authority for discipline.

Physical Therapy Board

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 and advice on rulemaking. Counsel also provided legal representation on disciplinary matters.

In 2013:

- Worked closely with the Division Director in this Director model program and provided general counsel representation including providing advice on statutory authority for discipline.

Audiologists Hearing Aid Providers:

These programs previously were combined. The legislature separated these Director model programs into two separate programs. Counsel worked closely with the Division Director in promulgating the new rules for these two programs.

- Counsel worked closely with the Division Director in this newly formed Director model program and provided general counsel representation, including providing advice on the promulgation of rules.
- **Nurse Physician Advisory Committee Task Force:** The Nurse Physician Advisory Committee Task Force (NPATCH) is an advisory committee comprised of physicians and nurses, representatives of their professional organizations and communities who provide consensus recommendations to the executive director of the Department of Regulatory Agencies, the Colorado Medical Board and the Board of Nursing on a number of issues. Counsel for the Nurse Physician Advisory Committee Task Force provided general counsel representation, including advice and guidance on compliance with the state's open meetings law for this unique task force.

- NPATCH also collaborated with the Governor’s Office in sponsoring the Quad Regulator’s Conference on September 27, 2013. This conference involved speakers, PDMP presentations, and discussion between the Colorado Medical Board, the Board of Nursing, The Board of Dental Examiners, and the Pharmacy Board to discuss issues related to prescription drug abuse and to strategize collaborative solutions to this problem.

The Colorado Board of Dental Examiners

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

- Dr. Kelly B. Wettstein, DMD entered into an Agreement to Cease Practice in lieu of Summary Suspension. Wettstein entered into a stipulated settlement with the Board for a period of suspension followed by probation and practice monitoring, admitting conduct including failing to supervise staff resulting in false billing and documentation, infection control deficiencies, and substandard patient care.
- In lieu of emergency action, Dr. Kawasugi Kai, DDS agreed not to perform any act constituting the care, treatment, or diagnosis of orthodontics (related to Invisalign) until the final disposition of the case. He entered into a Stipulation and Final Agency Order with admissions of failing to obtain adequate diagnostic information

such as radiographs, failure to address malocclusion, and failure to obtain patient consent for a complex treatment plan. Dr. Kawasugi agreed to a continuing restriction on orthodontic work until he completes continuing education, two years’ probation and two years orthodontic practice monitoring.

- Counsel to the Board provided general counsel representation at the Full Board Meetings and Panel Meetings, providing advice on the open meetings laws, as well as on rulemaking. The Board promulgated rules related to statutory changes related to military spouses.

Health Services Unit

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

- Board of Addiction Counselor Examiners
- Marriage and Family Therapist Examiners Board
- Office of Massage Therapist Registration
- Psychologist Examiners Board
- The Social Work Examiners Board
- The Board of Veterinary Medicine
- The Board of Chiropractic Examiners
- The Board of Optometric Examiners
- The Board of Registered Psychotherapists
- The Licensed Professional Counselors Examiners Board
- The Podiatry Board
- Office of Acupuncture Licensure
- Office of Occupational Therapist Registration

- Office of Respiratory Therapist Licensure

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.

Unit attorneys continue to advise the 14 boards and programs throughout the year, as they continue to update and modernize their rules to comply with the new sunset review statutes and to modernize their rules and policies in light of evolving trends in their respective professions. For example, the Board of Optometric Examiners continues to address the public health concerns raised by cosmetic contact lenses dispensed without prescription, and the Board of Veterinary Medicine continues to look at issues that impact animal health care, including small and large animal dentistry.

Noteworthy cases in 2013 include:

- Unit attorneys successfully secured a preliminary and permanent injunction against Mr. Tautfest following allegations that he engaged in the unregistered practice of psychotherapy. Mr. Tautfest had previously relinquished his registration following alleged violations of the practice act, and claimed that he was relying upon a “religious ministry” exemption.
- Board of Chiropractic Examiners and the Board of Veterinary Medicine v. David Barton, D.C.: Unit attorneys negotiated a permanent injunction with Barton

following allegations that he was engaged in the practice of animal chiropractic without receiving the proper certification/licensure and without required supervision.

- Office of Massage Therapist Registration v. Jess A. Kennedy: Unit attorneys successfully upheld the denial of an application to become licensed as a massage therapist submitted by Kennedy on the basis of his numerous run-ins with the law and a number of outstanding warrants for his arrest. The opinion by the ALJ described Kennedy as “utterly unsuited for registration.”

The Division of Insurance

The Division of Insurance is responsible for regulating the business of insurance in Colorado and other businesses and/or professions related to insurance. The Division’s regulatory authority extends to health care insurance, health maintenance organizations, long-term care insurance, Medicare supplement insurance, life insurance and annuities, title insurance, and property and casualty insurance (including auto and homeowners insurance). The Division also oversees the bail bond business in Colorado by regulating bail bond agents, bail bond registrants, and insurance companies that underwrite bail bonds. The Division is also responsible for certain regulatory matters related to pre-need funeral contracts and public adjusters.

Unit attorneys assist the Commissioner of Insurance and Division personnel on a wide variety of matters, including general counsel advice on fiscal and policy matters; legal issues related to the

business of insurance through informal Attorney General Opinions; rulemaking (including participation in monthly rulemaking hearings); requests for records under the Colorado Open Records Act; and changes and amendments to the insurance laws during the legislative session.

Unit attorneys also prosecute and represent the Division in litigation involving regulatory actions and market conduct examinations against unauthorized individuals and companies, and licensed individuals and insurance companies engaged in the business of insurance. Unit attorneys also defend the Commissioner and Division personnel in third-party litigation where the Commissioner and/or the Division are named as defendants or when Division personnel and/or Division records are subpoenaed. The Division currently has cases involving insurance producer licensing matters and market conduct examinations pending at the Office of Administrative Courts, in state district court, in the Colorado Court of Appeals, and in the Colorado Supreme Court.

Significant cases in 2013 included the following:

- After more than a year and a half of contentious litigation, attorneys successfully completed a settlement of cases filed in the Denver District Court and the Colorado Court of Appeals related to a Final Agency Order issued by the Commissioner concerning a Division market conduct examination (MCE) of First American Title Insurance Company (FATIC). The MCE in question identified numerous violations of Colorado title insurance statutes and regulations

related to FATIC's business practices in Colorado, as well as the business practices of FATIC's agents. The Commissioner issued an Amended Final Agency Order finding that FATIC committed law violations in 17 different areas through both the acts of the company as well as the acts of its agents. The settlement also included civil penalties and surcharges totaling \$177,500 against FATIC, which FATIC paid in full and dismissal of the pending cases in the Denver District Court and the Colorado Court of Appeals.

- The Division completed a market conduct examination of Attorneys Title Guaranty Fund, Inc. indicating the company violated various Colorado insurance laws and regulations related to its title insurance business. Attorneys assisted the Division in negotiating the issuance of an Amended Final Agency Order by the Commissioner. The company admitted various violations of Colorado law and related regulations, but demonstrated that it had initiated corrective actions in several areas which appeared to correct cited violations of Colorado law. In addition, the company accepted responsibility for the exercise of reasonable efforts to ensure that its agents comply with Colorado's insurance statutes and regulations. As a result, the settlement between the Division and the company reduced the original \$127,000 civil penalty to \$55,000 in civil penalties and surcharges.
- Unit attorneys prosecuted and successfully settled a case

involving Winterton, a Utah insurance producer who was unlawfully engaging in the business of insurance in Colorado without a license. An investigation by the Division revealed 105 instances where Winterton sold or solicited insurance in Colorado without a proper insurance producer license. With the assistance of attorneys, the Division issued an Emergency Cease and Desist Order against Winterton, and at the same time filed a Notice of Charges and Grounds for Denial to uphold the Division's 2012 denial of Winterton's non-resident insurance producer license application and requesting the imposition of civil penalties for engaging in the business of insurance in Colorado without a license. As part of the settlement, Winterton admitted that he violated Colorado law when he engaged in 105 insurance transactions in the State without a non-resident insurance producer license. He agreed to pay a civil penalty of \$3,000 for each of the 105 illegal insurance transactions for a total of \$315,000. Winterton also agreed not to re-apply for an insurance producer license in Colorado for a period of five years.

- Attorneys prosecuted and successfully settled a case involving Jonathan Johnson. Johnson was a licensed insurance producer (agent) with Farmers Insurance who was filing false policy applications in order to collect commissions. In late 2011, Johnson submitted 16 insurance policy applications to Farmers falsely representing to Farmers

that he had collected the initial premium due on each policy so that he could collect advance commissions in excess of \$38,000. In the course of its investigation, the Division learned that in addition to misappropriating funds belonging to Farmers, Johnson had misappropriated insurance premiums that several small business owners and individuals had paid to him for insurance. After filing a notice of charges and obtaining initial discovery, attorneys assisted the Division in mediation which resulted in a Stipulation and Final Agency Order in which Johnson admitted his unlawful conduct and agreed to pay civil penalties and restitution totaling more than \$88,000. Johnson had previously surrendered his insurance producer license. In addition, Johnson will be subject to another \$178,000 in civil penalties if he violates the terms of the stipulation.

- The Division of Insurance settled two pending administrative cases against bail bonding agent Joe N. Brown. Brown had a history of complaints dating back to 1999 and his license had been on probationary status since 2006. Because Brown continued to violate Colorado insurance laws the Division in 2011 filed an administrative action seeking revocation of his insurance producer license due to four additional complaints. The Division won summary judgment on three counts. The case was set for hearing however after receiving another complaint against Brown, the Division filed a second

administrative case and summarily suspended him for misappropriating \$30,000.00 in collateral he had collected on a bond, as well as for posting a second bond without authorization in an attempt to keep the collateral he had collected on the first bond. Brown repeatedly provided false information to cover up the misappropriated \$30,000.00, and committed numerous paperwork violations on both bonds. Four days before the summary suspension was set for hearing, Brown entered into a stipulation, making numerous admissions of both law and fact regarding both administrative cases. He was ordered to pay restitution for the misappropriated collateral. He also surrendered his license and agreed to never apply for another insurance producer license in Colorado. Brown also consented to a stayed civil penalty of \$300,000.00. Of this amount, \$150,000.00 will become due if Mr. Brown fails to pay restitution. The entire stayed civil penalty will become due if Mr. Brown ever transacts insurance business in the state of Colorado in the future.

- In September, the Office of Administrative Courts (OAC) issued an initial decision affirming the Division of Insurance' denial of the license reinstatement application of former bail bonding agent Cheryl Jackson-Herron and assessing her \$17,700 in civil penalties for violations of Colorado bail bonding laws. Along with numerous paperwork violations, the Division alleged that Jackson-Herron had misappropriated bond collateral in the form of cash and

vehicle titles given to her by three Colorado consumers while previously licensed as a bail bonding agent. The Court assessed a civil penalty of \$17,700. However, the Court ordered that the civil penalty shall be reduced dollar-per-dollar by any amount that Jackson-Herron pays to one of the Colorado consumers to compensate her for the loss of her collateral in the same amount.

- In January 2012, the Division of Insurance received a complaint from Tuneisha Harris, alleging that her ex-husband, Harrel Gene Keeling, was distributing business cards that represent he is a bail bonding agent. An investigation specifically revealed that Keeling had given one of his business cards to an employee at his son's school and told her to contact him if she ever needed a bond. In October 2013, the Commissioner issued an Ex-Parte Emergency Order Number against Keeling to Cease and Desist the Unauthorized Transaction of the Business of Insurance in the State of Colorado.
- In July 2012, Sherman P. MacDaniel applied for a resident insurance producer license with life authority. The Division denied MacDaniel's license application based on his admissions to fiduciary violations while previously licensed as a real estate broker as detailed in a Stipulation and Final Agency Order (FAO) that he entered into with the Colorado Real Estate Commission (CREC) during November 2011. The Division filed Notice of Grounds for Denial with the OAC. MacDaniel entered into a

Stipulation and FAO with the Division to resolve the case against him and admitted that the Division's denial of his license application was proper and that his fiduciary violations as a real estate broker also constitute violations of Colorado law. MacDaniel agreed to pay a civil penalty of \$3,000 for his violations and to not apply for an insurance producer license for one year.

- In August, 2012, the Division filed a Notice of Charges against Wilson alleging, among other things, that his insurance producer license should be revoked for failing to pay state income taxes in excess of \$25,000 and for demonstrating financial irresponsibility in failing to pay his taxes as well as for failing to pay an outstanding judgment in the amount of \$71,000 that he owed to Wells Fargo. The Division prevailed on summary judgment and an ALJ set the matter for a sanctions hearing. At the sanctions hearing, the Division argued that revocation of Wilson's insurance producer license and the imposition of civil penalties were appropriate in light of his past financial misconduct. The Division also presented evidence regarding Mr. Wilson's state of mind, namely, that he believes the U.S. government has no authority to tax unless tax returns are filed and that Wells Fargo had no authority to extend him a line of credit because only the US Treasury can issue money. The ALJ revoked Mr. Wilson's license but denied civil penalties as excessive in light of the revocation.
- Beginning with the 2013 Legislative Session, attorneys assisted the Division with drafting Colorado House Bill 13-1266 to align Colorado insurance law with the federal Patient Protection and Affordable Care Act. After House Bill 13-1266 passed the Legislature and was signed into law by the Governor, the Division began the process of amending and adopting new insurance regulations governing health insurance and healthcare in Colorado. Unit attorneys continue to assist the Division with matters related to the implementation of federal health care reform and the Division's commitment to making healthcare more accessible to consumers and containing health care costs while at the same time trying to maintain a competitive, viable market among insurers. The Unit's workload relating to federal health care reform increased significantly in the latter half of 2013 to comply with the deadlines set out in the federal law, to satisfy the need to align state insurance law with federal law, and to address the issues related to insurance premium rates.

Securities

Unit attorneys act as general and litigation counsel to the Securities Commissioner and the Colorado Division of Securities. The Unit assists the Division of Securities in the regulation of securities, issuers, broker-dealers, sales representatives, investment advisers, investment adviser representatives and other related entities. 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 (e.g. collateralized mortgage obligations), joint ventures and auction rate securities.

Unit attorneys continue to represent the Division of Securities in active litigation before all Colorado State and Administrative courts, and continue to advise the Division as requested on a variety of issues impacting the regulation of securities professionals and securities products offered in and from the state of Colorado.

Significant cases in 2013 include:

- *Joseph v. Providence Financial Services, Inc. et al*: Attorneys successfully obtained a temporary restraining order and negotiated a preliminary injunction against Providence Financial Services, Inc. d/b/a Integrity Financial Consulting, Integrity Financial Solutions, Inc., Perry Sawano and Brad R. Hawkins. The Commissioner alleges that the defendants, all licensed investment advisers, operated a Ponzi scheme through the use of so-called “alternative investments.” The Commissioner also named a number of entities connected to Sawano as relief defendants, seeking to recover ill-gotten gains that the entities have no legitimate claim to, including RMC Financial, LLC, Delta Real Estate Fund, Ltd., and Aspen Ridge Investments, Inc. The matter is currently pending in the Denver District Court.
- *Joseph v. Darrell McAllister*: Attorneys successfully negotiated a permanent injunction against Darrell McAllister, the former President, CEO and Chairman of the Board for Bank of Choice and Bank of Choice Holding Company following allegations that he violated the registration and antifraud provisions of the Securities Act through the sale of unregistered shares of preferred stock in an attempt to better capitalize his bank. Pursuant to the settlement, McAllister is permanently enjoined from future violations of the Securities Act and was required to pay restitution to the Commissioner.
- *Joseph v. Michael Philip McNamara et al*: Unit attorneys successfully negotiated a series of settlements to obtain permanent injunctions against McNamara, John Staiano, Jon Bradon Peterson a/k/a Brad Peterson, Brentwood Equity Advisors, LLC, Jomac, LLC, and Sierra Capital Resources, LLC following allegations that the defendants violated the registration, licensing and antifraud provisions of the Act in connection with solicitations to invest in the Life’s Good Family of Funds, which turned out to be a Ponzi scheme headed by man with a history of securities fraud. The largest judgments were entered against the corporate entities in the amount of \$5,806,083 and against McNamara in the amount of \$5,400,000.

Agriculture/Regulatory Boards Division of Professions and Occupations

Business and Technical Licensing Boards

The Unit provides general counsel and litigation 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 are the Board of Accountancy; the Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors; the State Electrical Board; the Board of Landscape Architects; the Passenger Tramway Safety Board; and the Examining Board of Plumbers.

The Type 2 programs represented are: the Office of Barber and Cosmetology Licensure, the Office of Funeral Home and Crematory Registration, and the Office of Outfitters Registration.

Key cases in 2013 include:

- Counsel for the Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors filed charges in 2012 to suspend the license of an engineer, Gary Howell, for allegedly performing substandard work on an elementary school in Meeker. Meeker Elementary School was closed and evacuated in November 2011 after it was found to be

structurally deficient. The Board claims that, in his engineering design, Mr. Howell did not meet professional practice standards and violated rules of conduct, including that he failed to consider seismic forces, failed to apply the correct occupancy category, failed to properly size foundation footings, and failed to complete structural design loads. Howell agreed to cease practice until the case was completed. The Board sought a two-year suspension of Howell's license and other discipline. Several weeks before hearing, Howell agreed to permanently relinquish his license and signed a stipulation.

- Permanent injunctions were obtained for the State Electrical Board in the Denver District Court to prevent unlicensed electrical work by two men. One man handed out business cards stating that he was a licensed electrician when he had no such license. A second man operated as an electrician when he was not licensed and as an electrical contractor when his business was not registered by the Board, including a \$20,000 residential electrical job. Both stipulated to entry of permanent injunctions.

Division of Banking

The Unit acts as general and litigation counsel to the Division of Banking and to the Colorado Banking Board which are responsible for the regulation of state-chartered commercial banks, trust companies, and money transmitters. 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, involuntary liquidation, and any other emergency issues that may arise.

Department of Agriculture

The Unit acts as general and litigation counsel to the various divisions of the Department of Agriculture, advising on a wide variety of subject areas including rulemaking, alternative livestock, 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, regulation of industrial hemp production and administration of the State Fair and its associated activities.

In 2013 the attorneys in the Unit:

- Responded to a petition for certiorari to the Colorado Supreme Court in defense of a Court of Appeals opinion that barred cattle ownership by a Logan County resident who had been found by the district court to be unfit to own livestock.
- Negotiated a contract on behalf of the Colorado State Fair to introduce the nation's first entirely cashless system to a state fair at

the 2013 Colorado State Fair and Exposition.

- The Department's attorneys filed a complaint for injunctive relief to enjoin a Mesa County rancher from owning livestock after he was convicted on 34 criminal counts of Cruelty to Animals Neglect/Mistreat. The Department moved to stay the matter until the rancher's appeal to the district court was final.

Mined Land Reclamation Board

The Unit acts as general and litigation counsel to the Mined Land Reclamation 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 as required by the board, including 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.

Key cases in 2013 include:

- *High Country Citizens' Alliance v. MLRB, et al*: The Board defended a judicial review action by High Country Citizens' Alliance concerning the Board's order approving a prospecting notice. High Country argued that the Board should have considered and required additional bonding for potential impacts on water

resources near the mine. The Board reviewed findings of other state agencies charged with monitoring water quality, the reduced size of the mining project, steps taken to protect water resources, and the historical quality of the water at issue. The District Court affirmed the Board's order. High Country filed an appeal with the Court of Appeals in July 2012. In October 2013, the Court of Appeals affirmed the District Court's holding and upheld the Board's decision.

Independent Ethics Commission

Amendment 41 was passed by Colorado voters in 2006 established the Independent Ethics Commission (IEC) 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 2013 covered a broad range of topics, including:

- acceptance of travel expenses from a non-profit;
- application of the gift ban to the establishment of a trust fund to solicit

funds for the criminal defense of a public official, and

- conflict of interest regarding a state employee's wife's interest in a contract with the State; Acceptance of registration fees and lodging for conferences; and Solicitation of funds for a blind trust to defray medical expenses.

Key cases in 2013:

- *Secretary of State Scott Gessler*: Counsel for the IEC also guided, defended and advised the commission through resolution of Complaint 12-07. In connection with this complaint, Secretary of State Scott Gessler, a party to Complaint 12-07, sued the Commission in Denver District Court in an attempt to obtain an order finding that the Commission did not have jurisdiction over the Secretary. The Commission prevailed in Denver District Court and after holding an evidentiary hearing, the Commission ultimately issued Findings of Fact and Conclusions of Law in Complaint 12-07, holding that Secretary of State Gessler violated ethical standards of conduct in his use of public funds. Counsel for the IEC also successfully defended against a mandamus challenge brought by the Secretary of State in Denver District Court regarding his advisory opinion requests.



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