



BOULDER COUNTY BAR NEWSLETTER

JULY - AUGUST 2010

INTELLECTUAL PROPERTY PROTECTION

By Russell Manning

For many businesses, proprietary intellectual property rights are among their most valuable assets. The ability to successfully compete may arise, for example, from product and/or service differentiation, advantageous business methods or an established business "name" and its associated goodwill. These advantages arise from properly establishing and enforcing intellectual property rights, which generally provide protection in the form of a temporary or ongoing, use-based monopoly.

Intellectual property consists of two broad categories, artistic creations and commercial creations. In the artistic arena, copyright laws protect creative works, such as books, movies, music, paintings, photographs and software, giving the copyright holder

the exclusive right to control the reproduction or adaptation of such works for a certain period of time. Commercial intellectual property rights (a.k.a., industrial properties) are typically created and used for industrial or commercial purposes. Industrial properties include patents, source identifiers (trademarks, service marks, trade names, etc.) and trade secrets. The following provides a brief overview of these protectable rights:

COPYRIGHTS

Copyrights are a matter of federal law and protect certain works of authorship as expressed in a tangible medium, including literary works, musical works, dramatic works, pictorial, graphic, and sculptural works, and sound recordings.

A copyright provides exclusive rights to the work, including the right to reproduce it, prepare "derivative"

works, and/or publicly distribute, display or perform the work. Infringement generally requires either actual copying or proof of access to and substantial certainty between the accused work and the copyrighted subject matter. However, the exclusivity of a copyright is limited by the "fair use" doctrine and other statutory provisions. The fair use doctrine permits limited copying without permission, if such use is reasonable and not unduly harmful to the interests of the copyright owner.

PATENTS

Patents are governed by federal law. They protect the new, useful and "unobvious" features of a product or process. A patent gives its owner the right to exclude others from making, using, and selling an invention for a limited period of time,

(continued on page 10)

TABLE OF CONTENTS

INTELLECTUAL PROPERTY	1
MEMBERSHIP BENEFITS	2
COLLABORATIVE LAW	3
PRESIDENT'S PAGE	5
CALENDAR OF EVENTS	6
LAWYER ANNOUNCEMENTS	7
RAISING THE BAR MENTOR/MENTEE	9
PRO BONO PAGE	11
ELDER JUSTICE	13
CLASSIFIED ADS	15

**ATTENTION NEW YOUNG LAWYERS
ARE YOU LOOKING FOR A MENTOR?
THINK ABOUT THE RAISING THE BAR
MENTOR/MENTEE PROGRAM
READ MORE ON PAGE 9 AND JOIN THIS PROGRAM!**

THANK YOU FOR BEING A MEMBER OF THE BCBA

ARE YOU TAKING ADVANTAGE OF ALL THE BENEFITS WE HAVE TO OFFER?

Like most associations, the Boulder County Bar Association (BCBA) offers career development opportunities, with many events to network and learn. The advantage of bar membership, however, is the unique ability to make a difference in the legal profession -- and the community. Through community service, section and committee initiatives and bench/bar interactions, the members of the bar not only develop their skills and careers, but also serve as advocates for change which reaches far beyond the doors of our law firms.

CONNECTIONS ARE EVERYTHING

The most common reason people say they join any association is to network. Through bar-sponsored social and educational experiences, relationships are forged and important ideas shared which lead to building professional relationships and to achieving personal and professional goals.

You can stay connected through the association's comprehensive annual Membership Directory, which includes names, addresses, phone numbers and e-mail addresses, and our website, which has the current and archived monthly newsletters, *Find A Lawyer* listings of your colleagues in areas of practice and legal resources in Boulder County for you and your clients. There are helpful listings of judges and courts in Boulder County as well as other judicial districts in Colorado. We are updating our website, and there will be even more to keep you informed.

BUILD YOUR AVENUES FOR KNOWLEDGE

The Boulder County Bar Association offers many noon time CLE's on substantive topics produced by its 14 sections. BCBA members are given the opportunity to meet their CLE ethics and general requirements for a very affordable price. In addition, the section meetings are the venue where members build collegiality and legal expertise in various practice areas. Members also stay in touch about issues and events through the BCBA Newsletter, an in-depth publication mailed or emailed to you 11 times a year. Articles on trial skills, law office management and changes in current laws will help keep you updated on what effects your law practice.

OPPORTUNITIES FOR LEADERSHIP AND SERVICE

Being part of the leadership of a bar association or participating in outreach activities can be personally rewarding as well as good for business development. The bar offers various ways to be a leader by chairing a section, serving on the Board of Directors, helping with school programs, coaching mock trials, becoming a mentor to a new/young lawyer and taking part in special projects that come forth during the year. It's all about your vision for yourself and your practice.

EXPANDING YOUR INFLUENCE

With almost 1,500 members, the Boulder County Bar Association is in a prime position to influence what happened (*Go to page 13*)

COMPLEX BUSINESS TRANSACTIONS

ALLEN SPARKMAN
LISTED IN BEST LAWYERS IN AMERICA®

BUSINESS STRUCTURING M & A
SOPHISTICATED FINANCING EXIT PLANNING

WE WELCOME REFERRALS AND CO-COUNSEL OPPORTUNITIES



We Get the Deal Done

SPARKMAN • SHAFFER • PERLICK LLP 303.449.6543 | FIRM@SSPATTORNEYS.COM | WWW.SSPATTORNEYS.COM

COLLABORATIVE DIVORCE – FOUR FAQs

BY DARYL JAMES

Divorce practice continues to evolve, both in Colorado and nationally. “In the last quarter century, the process of resolving legal family disputes has, both literally and metaphorically, moved from confrontation toward collaboration and from the courtroom to the conference room.”¹ The change has been described by one legal scholar as constituting a paradigm shift in the way the legal system handles family disputes.² Evidence of this process abounds in Colorado: the requirement that parties mediate before trial, the implementation of C.R.C.P. 16.2 and enactment of the parenting coordinator³ and decision maker⁴ statutes. An additional element is the growth of collaborative law. Introduced in Colorado in 2002, it has spawned a statewide organization and a number of local practice groups.

As the use of collaborative methods continues to gain traction and visibility in Colorado, attorneys unfamiliar with the practice pose a number of recurring questions. Here are four, together with answers.

1. Isn't collaborative practice unethical?

The question of whether collaborative practice violates the Colorado Rules of Professional Conduct was taken up by the Colorado Ethics Committee in late 2006. The product was Ethics Opinion 115, which concluded that collaborative practice is unethical only if a lawyer enters into a contractual agreement (a “disqualification agreement”) with the opposing party prohibiting the lawyer from continuing to

represent his or her client. The committee viewed such a contract as creating a non-waivable conflict of interest under Colo. RPC 1.7(c).

Many other professional bodies have considered the question and come to the opposite conclusion. Most notably, the Standing Committee on Ethics and Professional Responsibility of the American Bar Association opined in 2007 that clients have the right and ability to hire an attorney for representation of such a limited scope, and for lawyers to engage in such representation. Colorado is the only jurisdiction to conclude that a disqualification agreement signed by the attorneys in a collaborative case presents an inherent and non-waivable conflict of interest.

Nonetheless, the opinion provided a safe harbor for collaborative practice. Contained in a footnote is the acknowledgement that the parties to a divorce may agree between themselves to terminate their respective lawyers in the event the collaborative process fails, as long as the attorneys are not party to that agreement. In other words, collaborative practice is ethical as long as the attorneys are not party to a disqualification agreement with the other party. Not surprisingly, this is exactly how collaborative cases are conducted now.

2. I am already collaborative. Why would I bother signing a fee agreement that would prevent me from taking a case to court?

•Economic reasons: Collaborative

practice is on the cusp of a national breakthrough. The Uniform Collaborative Practice Act has been promulgated by the Uniform Law Commission and is being revised after consideration at the February 2010 ABA national meeting. The current draft is available online.⁵ This development rivals implementation of no-fault divorce and the application of mediation to divorces. A legal scholar who has extensively researched and written about collaborative law says, “Collaborative Law will continue, and continue to grow. There is clearly market demand for this type of practice, as well as a great number of lawyers eager to adopt it.”⁶

•Personal intellectual growth: Litigation offers the opportunity to polish the rhetoric of argument. Although an important part of managing and settling litigated cases, negotiation is always secondary to the primary force in the case, which is the possibility of a litigated resolution. Each collaborative case offers the opportunity to polish the rhetoric of negotiation skills, without the safety net provided by the court. In a collaborative forum, lawyers are free to explore the rhetoric of integrative bargaining and reciprocity.⁷ Not every lawyer is intellectually interested in this, but, for those who are, a different rhetorical approach injects an element of uncertainty and opportunity for growth into their practice.

•Personal ethical growth: The collaborative fee agreement and

(continued on page 12)

ANNUAL DINNER 2010



President-elect Rich Irvin thanks President Karl Kumli for his contributions to the bar during his year as president.



David Pacheco presents the Outstanding Young Lawyer of the Year Award to Lauren Ivison. David was the recipient in 2009.



Chief Judge Roxanne Bailin presents the Ron Porter Memorial Award of Merit to Norm Aaronson



Ladies, and I do mean beautiful ladies! L to R Martha Ridgway, Ann Mygatt, Debbie Crosser, Amy Waddle and Rachael Lattimer.



Karl Kumli presents the "Ole' Boot" Community Service Award" to John Wood, who accepts on behalf of the Real Estate Section.



Above left to right are: Andy and Kristin MacDonald, Jon Banashek and Kevin Brackley



Left: Maria Barrones, Margarie Sant and Christina Fiflis

PRESIDENT'S PAGE
WHEN THE LEGEND BECOMES FACT, PRINT THE LEGEND
BY RICH IRVIN



This is my first President's Page as president of the Boulder County Bar Association. I'm Rich Irvin and have been in private practice for 30 years. My concentration has been in criminal defense as I was a Public Defender prior to private practice. Before law school, I was a social worker which seems to dovetail with criminal defense – i.e., dealing with people in crisis.

I have read, with interest, the past presidents' pages, well written by Karl Kumli, Denean Hill, Sonny Flowers, etc. I've tried to think of what I could say that hasn't been said before.

In viewing our profession it, seems we have a huge deficit of having fun. We take ourselves way too seriously. We can't see the inherent humor in life and laugh at our own foibles. By being grim, we lose our ability to think outside of the box and come up with creative solutions that our clients need. With a sense

of humor to use as glasses to see the world, we are better lawyers.

Frank Dubofsky gave a great CLE several years ago where we read several books, saw the movie version of each and discussed what they meant to us as lawyers. These were great books and movies which can literally change your view of the world, including *To Kill a Mocking Bird*, *Billy Budd*, the *Ox Bow Incident*.

It got me thinking, which some of you think I never do, of a number of movies dealing with the many aspects of the law. Both directly and tangentially, they help illuminate the law and its place in society.

I thought I would pick movies that are not necessarily directly related to the law, such as "My Cousin Vinny."

My first choice is "The Man Who Shot Liberty Valance," with Jimmy Stewart as Ransom Stoddard, an Easterner who brings his law degree to the West. There he meets John Wayne as Tom Doniphon, a rancher who sees his way of life being threatened by the appearance of Stoddard and the law he brings. He is opposed by the baddest of bad guys – Lee Marvin as Liberty Valance, who uses the gun, force and intimidation to impose his law.

(continued on page 8)

A black and white advertisement for WestlawNext. The background is a close-up of a woman with dark hair, looking down with a thoughtful expression. Overlaid on the image is the text "LEGAL RESEARCH THAT SPEAKS THE SAME LANGUAGE YOU DO: HUMAN." in large, white, bold, sans-serif font. Below the image, in a white box, is the text "Introducing a new Westlaw®. Legal research goes human. Discover more at WestlawNext.com". At the bottom right of the white box is the "WestlawNext™" logo. At the bottom left of the white box is the copyright notice "© 2010 Thomson Reuters L-357030/2-10".

**LEGAL RESEARCH
THAT SPEAKS
THE SAME
LANGUAGE
YOU DO:
HUMAN.**

Introducing a new Westlaw®. Legal research goes human.
Discover more at WestlawNext.com


WestlawNext™

© 2010 Thomson Reuters L-357030/2-10

CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Register by e-mailing lynne@boulder-bar.org, or pay online with a credit card at www.boulder-bar.org/calendar. You will be charged for your lunch if you make a reservation and do not cancel prior to the CLE meeting. BCBA CLE's cost for members is \$20 per credit hour, \$10 for New/Young lawyers practicing three years or less.

SPACE IS LIMITED! RESERVE YOUR SPACE TODAY!



1st Annual
**BOULDER COUNTY SENIOR
LAW DAY**

SATURDAY AUGUST 14, 2010
8 am to 1 pm
7:15 am Continental Breakfast and Registration
Radisson Conference Center, 1850 Industrial Circle, Longmont, CO

Boulder County Seniors, Adult Children and Caregivers are invited to participate in this outstanding event!

Join us for an important and valuable morning of educational seminars focused on many issues facing our growing elder population. Enjoy a complimentary continental breakfast and snack and receive a free copy of the 2010 Senior Law Day Handbook. Attorneys and other community resource experts will be available to answer individual questions. If you are a senior, an adult child with a senior parent, or a caregiver, this is one event you must not miss!





TOPICS INCLUDE

- * Feuding Families and Guardianship
- * Rights and Responsibilities of Caregivers
- * Staying in Charge of Your Life
When It Matters Most
- * Estate Planning: The Basics and Beyond
- * Aging In Place
- * Scam-proofing your Life
- * Medicare: What's New
- * Advanced Medical Directives
- * Everything You Wanted To Know
About Funerals But Were Afraid to Ask
- * Medicaid: Myths and Mysteries
- * Long Term Care Insurance
- * Medical Marijuana
- * Shopping for Nursing/Long Term Care
- * Annuities: The Good, the Bad and the Ugly
- * Grandparenting Rights
- * Comings and Goings for Hospital Patients
- * Memory/ Alzheimer's Issues
- * Adult Protection: Elder & Financial Abuse
- * Independent Living: So Many Choices

Seminars are free due to the generous underwriting of our sponsors

To register call 303.441.1585 or go to www.seniorlawday.org and click on Boulder County. Please register by August 10.

Presented by:



Gold Sponsors:
Boulder County Bar Foundation Golden West Longmont United Hospital
Boulder County Estate Planning Council Boulder County Aging Services

In-Kind Sponsors: **Camera 50+ Marketplace News**

LAWYER ANNOUNCEMENTS

**Hogan
Lovells**

Hogan & Hartson and Lovells have combined to form Hogan Lovells.

Hogan Lovells, the first 'merger of equals' of Top 30 global law firms in the legal sector, came into existence on **May 1, 2010.**

With an international footprint unmatched by any other firm in Colorado, Hogan Lovells provides a wide range of comprehensive legal services, offering high quality advice to local, national, and international clients across the full spectrum of their business activities.

1470 Walnut Street, Suite 200, Boulder, CO 80302
T +1 720 406 5300, F +1 720 406 5301

1200 Seventeenth Street, Suite 1500, Denver, CO 80202
T +1 303 899 7300, F +1 303 899 7333

Two North Cascade Avenue, Suite 1300, Colorado Springs, CO 80903
T +1 719 448 5900, F +1 719 448 5922

To learn more, please visit www.hoganlovells.com.



**Attorneys Zachary Malkinson &
Kristan Wheeler are excited to
announce the opening of the firm**

Malkinson Wheeler Law, LLP

**1526 Spruce Street, Suite 208
Boulder, CO 80302
303.442.3873**

www.malkinsonwheelerlaw.com

**Malkinson Wheeler Law, LLP
specializes in criminal defense**

Boulder County Bar Foundation grant applications are now being accepted for legally related programs or events that are being planned for 2010-2011.

The Foundation Grant Committee will meet in September to make decisions on the grant applications for 2010-2011.

Please call the bar offices (303.440.4758)
or go to the bar's website
www.boulder-bar.org
to download the
Foundation grant application



**CONGRATULATIONS TO
MAGISTRATE FRED CLIFFORD**

**BEST WISHES ON YOUR RETIREMENT AND
THANK YOU FOR YOUR MANY
CONTRIBUTIONS TO THE 20TH JD
THE BOULDER LEGAL COMMUNITY**

PRESIDENT'S PAGE *(continued from page 5)*

You need to see this movie. The title gives away the plot. But the subplot is how Ransom Stoddard, who represents law and order, overcomes the brute force and lawlessness of Liberty Valance. Stoddard hangs up his shingle, which is immediately shot down by Liberty Valance. "Pilgrim" Stoddard continues to promote the law over anarchy. Ultimately the law represented by Stoddard prevails and, as the title suggests, Liberty Valance and the lawlessness he represents does not. In the process, the territory becomes a state, and Stoddard becomes governor and senator because when law comes West, stability and prosperity follow. Also in the process, John Wayne becomes irrelevant and disappears.

However, the law doesn't prevail because it's good, but because it uses force, represented by John Wayne, to prevail. But when it does prevail, civilization follows, and the

desert blooms. The West becomes safe for Starbucks and Crocs.

When I was considering this movie, a civil case was in the news that some people thought was silly. On the surface maybe it was, but it wasn't to the people involved. Because of people like Ransom Stoddard, the parties could present their arguments in public to a neutral court. A jury of their peers considered the case and made a decision. Rather than hiring Liberty Valance, they used the law to settle their dispute. They may not have been happy with the result, but when it was finished they could get on with their lives without making a peep. Plus, nobody got shot.

I know it's a reach to connect Lee Marvin and John Wayne to a Boulder civil case, but why not? When you read the early history of Boulder, there are many stories similar to this movie. Progress comes in fits and

starts. It is not a smooth steady progression. That's where lawyers come into play.

That progression continues. We are not at the end of our journey. We are still Pilgrims, as John Wayne christened Jimmy Stewart. The last line sums it up. Stoddard is given a favor not because he brought the law to the West, but because "nothing is too good for the man who shot Liberty Valance."

I am open to suggestions for other movies. So let's have fun and use our imagination and curiosity. It helps to make us better lawyers and lowers our blood pressure.

CHRISTINE A. COATES, JD



- **Mediation • Arbitration**
- **Med-Arb**
- **Settlement Conferences**
- **Parenting Coordination**
- **Decision-Making**

303-443-8524

www.coatesmediation.com

*Providing ADR Services
for over 22 years!*

RAISING THE BAR MENTOR/MENTEE PROGRAM

After a successful year for the Raising the Bar Mentor/Mentee program, the Boulder County Bar Association is beginning to prepare for the second year to serve the young lawyers of the bar in getting acclimated to the practice of law in Boulder County. The monthly CLE programs provided men extensive education on many aspects of the practice: client relations, litigation, marketing, law office management and technology, dealing with ethical situations and hearing from the 20th JD judicial officers and their expectations.

The program consists of two primary components. First, each mentee will choose a practice area of interest and then will be matched with an experienced attorney in that field. The mentor will share their wisdom and leadership through structured monthly one-on-one meetings and weekly communication. Secondly, the CLE programs will provide valuable guidance and insight to the challenges professionals face in the practice of law. The coming year's programs will have the same characteristics and programming goals.

Raising the Bar is intended to increase the level of professionalism and the quality of service offered by Boulder county attorneys. This is an exceptional opportunity for promising lawyers to learn skills and gain wisdom from distinguished attorneys in their area of practice. It is also a valuable opportunity for those who have benefited from the practice of law to give back to the bar and help i

To register or find out more about **Raising the Bar** please contact the Boulder County Bar Association at 303.440.4758. The mentor and mentee applications are on the bar's website www.boulder-bar.org in the Mentor/Mentee Section.

2009 - 2010 Raising the Bar Mentor/Mentee Program
Thank you to all the mentors and the mentees for your participation in the program.

Mentors

Jon Banashek
Paul Bierbaum
Karen Burns
Keith Collins
Carmen Danielson
Bruce Dierking
Peter Dietze
Christina Fiflis
Andy Gitkind
David Harrison
Rich Irvin
Ron Jung
Kevin Kinnear
Karl Kumli
Mark Langston
Russ Manning
Stacy Margolin
Richard Marsh
Meg McClellan
Rich Nehls
John Purvis
Tom Rodriguez
Andrew Spiegel
Helen Stone
Lee Strickler
Jerry Sloat
Star Waring

Mentees:

Jessica Anderson
Josh Anderson
Gregory Fettig
Jared Hassen
LeAnne Hamilton
Megan Hottman
Jennifer Hume
Joshua Long
Jennifer Lorenz
Jennifer McGinn
Melissa Mullin
David Orms
Jonnye Phifer
Alyssa Roter
Marjorie Sant
Craig Small
Michael Smeenk
Chelsea Victor
Chet Cotten



Rush!
Service of Process • Court Filings • Copy Jobs
Order Online @ www.dbcouriers.com or call 303.444.9833
Full Front Range Coverage Since 1987

INTELLECTUAL PROPERTY PROTECTION *(continued from page 1)*

which prevents others from practicing the invention without a license from the patent owner. The patent does not give the owner any affirmative right to make or use an invention, and a patent is not required for the owner to market the product or service.

A patent is obtained by filing an application with the United States Patent and Trademark Office. The patent itself is a legal document that includes a description of the inventive concept and concludes with one or more "claims" which legally define the invention. The application procedure includes a substantive examination of the invention and a comparison between the claimed invention and the "prior art," or existing technology. There are two primary types of patents: utility patent and design patents. Utility patents involve inventions such as a machines, articles of manufacture, methods, processes and chemicals or improvements to any of these things. Design patents cover the ornamental appearance of a useful device but not its function.

SOURCE IDENTIFICATION

Source identifiers such as trademarks, service marks, trade names and trade dress are used to convey to the public that a product or process comes from a particular business. Each identifier carries a degree of recognition value that can be equated with the level of goodwill that the source business has developed.

Trademarks and service marks are governed by both state and federal law, and they may be registered at either level. However, establishing and maintaining rights in a trademark or service mark requires actual or intended use of the mark in commerce.

The term "trademark" includes any word, name, symbol or device or any combination thereof adopted and used by manufacturers or merchants to identify their goods. Service marks are essentially identical to trademarks, except that they are used to identify and distinguish services and the source of those ser-

vices. A trade name is a business name, including assumed names and fictitious names, used to indicate the true legal identity of a corporation, partnership or other business entity. Trade dress is a concept similar to trademarks and refers to the overall appearance of a product or its packaging.

TRADE SECRETS

Trade secrets exist by virtue of state law and constitute confidential information, not generally known, which provides the owner with a competitive advantage. A trade secret need not involve the degree of novelty necessary under the patent statutes. It must simply be a secret that is not generally known in the industry. Other than the steps necessary to assure secrecy, no formal process is required to obtain a trade secret. Likewise, the unfettered disclosure of the secret typically results in its loss.

SUMMARY

Given the various available options for protecting intellectual property, it follows that some of the options discussed above provide overlapping coverage. Indeed, often a creative or industrial work may benefit from use of multiple protection strategies. Individuals who produce intellectual property should contact an intellectual property attorney to discuss these options.

Russell Manning is an attorney practicing at March Fischmann and Breyfogle LLP in Boulder. Contact him by calling 720.562.5502 or e-mailing rmanning@mfbllaw.com

Over Twelve Years of Experience with

- Mediation
- Arbitration
- Settlement Conference Services

Also accepting referrals for personal injury civil and criminal litigation.

Past President of Colorado Trial Lawyers and Boulder County Bar Association; Colorado Super Lawyer 2007-2010

Jim Christoph, JD

303.381.2560 christophlaw@comcast.net



PRO BONO PAGE

Pro Bono Referrals

Seventeen cases were referred in June. Thank you to the following attorneys:

Susan Bryant
Christina Ebner
Bruce Fest
Daniel Flynn
Judson Hite
Lauren Ivison
Chris Jeffers
Marion McBain
Robert Pierce
Meredith Roberts
Georgiana Scott
Sharon Svendsen
Bruce Warren

Thanks to the following mediators accepting a case in June:
Helen Stone

Pro Se Program Volunteers

Sheila Carrigan
M.L. Edwards
Lauren Ivison
Chris Jeffers
Tucker Katz
Jennifer McGinn
Leonard Tanis

BCAP Volunteers

Thank you to the following attorneys who accepted pro bono referrals for the Boulder County AIDS Project in June:

Paul Bierbaum
Laurel Herndon – The Immigration Legal Center of Boulder County

PRO BONO CORNER

IF YOU ARE CONSIDERING
ACCEPTING A PRO BONO CASE
AND WOULD LIKE MORE
INFORMATION, PLEASE
CALL ERIKA AT 303.449.2197.

CLE CREDITS ARE AVAILABLE FOR
PRO BONO SERVICE.

Boulder County Bar Association Professionalism Committee On-Call Schedule

July 19 Mark Langston 303.440.9684

July 26 Bev Nelson 303.554.7030

August 2 Anton Dworak 303.776.9900

August 9 Christie Coates 303.443.8524

August 16 Steve Meyrich 303.440.8238

August 23 Helen Stone 303.442.0802

August 30 Curt Rautenstrauss 303.666.8576

COLLABORATIVE LAW *(continued from page 3)*

underlying collaborative process agreement encourage the highest ethical practice. This is because it mandates full disclosure (arguably not much different from what Rule 16.2 requires), coupled with an explicit encouragement to engage in integrative bargaining. This has the potential of freeing lawyers from what has been called the “exceedingly serious ethical problems” of distributive positional bargaining.⁸ These derive from the real possibility that success in distributive bargaining may come down to just two things: “being successful, first, in misrepresenting one’s own indifference point and, second, in seeing through your adversary’s attempt to misrepresent theirs.”⁹ In short, lying works in distributive bargaining and is arguably permitted because it is part of the rules of the game. The practice of lying in negotiation is fraught with post-divorce difficulties for the couple as well, as they act out against one another based in part on their perceptions of the other’s deceptive behavior. This is not an indictment of the lawyer’s role in a positional negotiation, but it is a

recognition of the reality of the situation and the after-effects for the divorcing couple. Why not try a method of dispute resolution which offers a better opportunity for higher ethical practice and consequent good relations between ex-spouses?

- Psychological reasons:

Negotiation conducted without the pressure induced by court deadlines and litigation preparation can be more relaxed. In turn, the negotiators are in a better mood to consider their options. Research shows that a positive state of mind leads to more creative problem solving.¹⁰ It naturally follows that decisions are better when reached with time to spare.

- Professional respect: Empirical evidence shows that lawyers who negotiate integratively are considered by their peers to be more effective than positional negotiators.¹¹ It is possible to negotiate integratively outside of the collaborative model, but collaboration requires it, and it is impossible to

do it unless the other negotiator is also doing it. By designating the case as collaborative, with collaboratively trained lawyers, the odds that the lawyer on the other side of the table will negotiate integratively are greatly increased.

3. I have had several clients who tried the collaborative approach before they came to me. They failed to get an agreement. Why put the clients through the trouble of collaboration, when they will likely have to go to court anyway?

- The vast majority of cases, ninety percent by some counts, settle. Why not open up the discussion in each case to interest-based bargaining as much as possible?

- The end of collaboration does not mean that all the time has been wasted. The parties have gathered and analyzed information as they would without collaboration and may in fact have settled at least some parts of the case.

- Fifty percent of marriages end in divorce. The number alone says that it is a normal facet of life. People who divorce are no better or worse than people who don’t. They deserve the best possible chance of living life free of judgment. When people engage the litigation system as part of their divorce, they are operating under the threat of judgment. Sometimes that is necessary but not usually. Collaborative and mediated approaches give spouses the opportunity to end a marriage free of that threat. For those able to use that opportunity productively, the outcome is better. They deserve

(continued on page 14)



Accord
ADR
Group

Mediation • Arbitration • Facilitation



Steve Clymer, Esq.
Principal Mediator

ADR in our *new* offices or yours
in the Denver Metro area.

3223 Arapahoe Ave., Suite 300, Boulder, CO 80303
303-530-2137 | www.accordADRgroup.com

BOULDER COUNTY: IN THE VANGUARD ON ELDER JUSTICE

BY MIMI GOODMAN

Boulder County is staying ahead of the curve when it comes to protecting our vulnerable older citizens.

Late last fall a workgroup came together composed of members of the Section on Alternative Dispute Resolution, the Section on Taxation, Estate Planning and Probate, non-lawyers from the mediation and elder care communities, and Judge Mulvahill and John Lauce representing Boulder's probate court. The workgroup's initial task was to present a seminar on the application of alternative dispute resolution techniques to family conflicts over care of the elderly and management of their property. Early in the process, the Boulder District Attorney's office informed the Probate Section of their eagerness to educate our group about the 26% increase in elder abuse cases in Boulder County, and the county's efforts to address the problem – in particular, the U.S. Justice Department-funded Boulder County Elder Justice Project.

With these forces aligned, the workgroup presented a well-attended 3-part series last spring in the courthouse jury room, hosted by the Boulder Bar. Christine Coates, Martha Ridgway and Renee Ezer introduced attendees to the methods and techniques of alternative dispute resolution, and the special emotional issues involved in family conflicts over care of the elderly. Boulder County District Attorney Stan Garnett, Deputy District Attorney Karen Peters, and Consumer Protection Director Cynthia Taylor reported to us on the Boulder County Elder Justice

Project. In the third segment, expert mediators Steven Meyrich and Kon Damas demonstrated mediation techniques in action through a lively role play. Judge Mulvahill graciously joined the fray and sparred with the author as siblings with difficulty seeing eye-to-eye on a parental care crisis (with public TV maven Christopher Sarson playing the role of parent, and Rod Felzein and Renee Ezer playing counsel to the siblings).

While our Bar leadership was busy helping the legal community develop skills for assisting families grappling with the challenges of elder care, the District Attorney's office and other county agencies and organizations have been taking the offensive around issues of elder justice, aiming to shine a light in every dark corner of our community where a vulnerable elder may be experiencing neglect or exploitation. The DA's office informed us that elders who have experienced abuse are at greater risk for accelerated deterioration and early death.

In 2008, Boulder County received a \$465,000 grant from the U.S. Department of Justice to “create a

seamless collaboration in cases of elder abuse, exploitation and neglect in order to hold offenders accountable and protect victim safety.” The County's strategies to achieve this goal include systems change (improving effectiveness of organizations), training, needs assessment and victim services. This grant has increased awareness and sensitivity around elder abuse issues in Boulder County through training of judges, prosecutors, detectives, DA investigators, law enforcement officers, and victim advocates. Detailed policy reviews were conducted by agencies including Adult Protective Services of Boulder County, the DA's office Moving to End Sexual Assault (MESA), the Longmont Police Department, Longmont Senior Services, Safe Shelter of St. Vrain Valley, the Sheriff's Office, Safehouse Progressive Alliance for Nonviolence (SPAN) (which has seen a 300% increase in services for clients age 50 and older in the last three years), Boulder County Aging Services, and the 20th Judicial District Court. Some of the grant dollars will be used to enhance services available to sur-

ROCKY MOUNTAIN ARBITRATION SERVICES, LLC
Cost-Effective Arbitration that is Simple, Fast, Flexible, and Fair

- Arbitration at Our Offices or Your Location
- Telephone Hearings / Internet Arbitration
- No Administrative Fees
- Simple Arbitration Rules (on our website)
- Simple Fee & Expense Policies (on our website)
- Free Sample Arbitration Clauses (on our website)
- Well-Written Arbitration Awards

Business Disputes • Contract Disputes • Construction Disputes • Corporate Veil Issues
Business Torts • Equipment Leasing Disputes • Lease Disputes • Real Estate Disputes

www.rockymountainarb.com

COLLABORATIVE LAW (continued from page 12)

a chance to get that better result.

• Research demonstrates that people who are offered a non-litigated approach to resolve their parenting issues have significantly improved parenting relationships up to 12 years after the divorce.

A study in a Virginia jurisdiction randomly assigned couples who had recently filed for divorce to either a control or experimental group. The control group was simply monitored as the case wound its way through the court system. The experimental group was immediately provided a systematic series of mediations until the case was resolved.

The mediation group after 12 years had significantly greater physical¹² and telephone¹³ contact with their children, and the nonresidential parent was reported as having a greater influence on childrearing decisions and being more involved in discipline, grooming, moral training, errands, holidays, significant events, school and church functions, recreational activities and vacations.¹⁴

While the research did not test for the effect of a collaborative approach to dispute resolution, the results can be fairly interpreted to indicate that divorcing parents benefit from inclusion in a programmatic, non-litigated system of dispute resolution. Collaboration is such a program, because it offers a series of planned negotiation sessions monitored and facilitated by professionals, including at a minimum two lawyers, with the additional involvement as necessary of

mental health professionals, divorce coaches, financial planners.

4. Collaborative divorce is not really practicing law, is it?

• The Colorado Rules of Professional Conduct recognize that a lawyer may represent a client as an advisor, advocate, negotiator and evaluator.¹⁵ Collaborative representation is simply one way for a lawyer to act as negotiator. A lawyer who tries collaboration is expected to effectively negotiate. This requires negotiation expertise, including knowledge about interest-based versus positional approaches and an understanding of negotiation behavior (for instance that negotiation is not completely rational, that we all have biases that prevent our seeing or understanding all relevant facts and that within the negotiation we all get distracted by events that prevent us from seeing crucial information). This entails taking each spouse's feelings and perceptions into consideration, knowledge that is not essential to litigating a case. It does, however, make one a more effective negotiator for the client.

This list of questions and answers is truncated because of space limitations. For more information see the Boulder, Colorado, and International collaborative websites, or call some of the local collaborative practitioners.¹⁶

Daryl James has been a family law attorney in Boulder County since 1986. He has practiced collaborative law since 2004. He is a partner in the firm of James, Kirsh, Inness-Brown & Ware, LLC. If you have any questions, please contact Daryl at djames@jkiwlaw.com

FOOTNOTES

1. Schepard, A. & Salem, P. (2006). Foreword to the Special Issue on the Family Law Education Reform Project, *Family Court Review*, 44:513, 516.

2. Singer, J.B. (2009). Dispute Resolution and the Post-divorce Family: Implications of a Paradigm Shift, University of Maryland School of Law Legal Studies Research Paper No. 2009-16.

3.C.R.S. §14-10-128.1.

4.C.R.S. §14-10-128.3.

5.http://www.law.upenn.edu/bll/archives/ulc/ucla/2010apr12_draft.htm

6. Peppet, S. (2008). The Ethics of Collaborative Law. *Journal of Dispute Resolution*, 1, 132-161.

7. See Wetlaufer, G.B. (2005).

The rhetorics of negotiations. Available at: <http://papers.ssrn.com/sol3/papers.cfm?abstractid=770545>

8. Wetlaufer, 2005.

9 Id.

10. Carnevale, P. (2005). Positive affect and decision frame in negotiation. *Springer Science+Business Media*, <http://ssrn.com/abstract=998176>; Isen, A. M. (2001). An influence of positive affect on decision making in complex situations: Theoretical issues with practical implications. *Journal of Consumer Psychology*, 11, 75-85.

11. Schneider, A. (2002). Shattering Negotiation myths: Empirical evidence on the effectiveness of negotiation style. *Harvard Negotiation Law Review*, 7, 142-233

12. 30% of the mediation group saw their children at least once per week, compared to 9% of the litigation group. At the other extreme, 39% of the nonresidential parents in the litigation group had seen their children only once or not at all during the previous year, compared to only 15% of the mediation group.

13. 54% of the mediation group spoke with their children by telephone at least once per week, compared to 13% of the litigation group. 54% of the litigation group had spoken with their children by telephone once or not at all during the past year, compared to 12% of the mediation group.

14. Emery, R.E., Laumann-Billings, L., Waldron, M.C., Sbarra, D.A. and Dillon, P. (2001) Child custody mediation and litigation: Custody, contact, and coparenting 12 years after initial dispute resolution. *Journal of Consulting and Clinical Psychology*, 69, 323-32; Emery, R. E., Sbarra, D. and Grover, T. (2005). Divorce mediation: research and reflections. *Family Court Review*, 43, 22-35.

15. C.R.P.C. Preamble (2).

16. <http://www.collaborativedivorceboulder.org/>;
<http://www.colocp.org/>;
<http://www.collaborativepractice.com/>.

ELDER JUSTICE *(continued from page 13)*

vivors of abuse, based upon a needs assessment completed in January 2010. The target group includes women and men age 50 and above who have experienced, abuse, exploitation or caregiver neglect by one or more perpetrators and are in need of emotional support, safety planning and resources identification, coordination and follow up. If you want to know more about the Boulder County Elder Justice Project, call coordinator Janet Ibanez at 303-441-1170. If you have a specific question for the DA's office about an elder abuse situation, call Cynthia Taylor at 303-441-3856.

Last but certainly not least on the list of Boulder County activism around elder issues, on August 14 Boulder County will host its first Colorado Senior Law Day at the Radisson Conference Center in Longmont (see advertisement in this newsletter). Colorado Senior Law Day is an annual event, providing educational programs around the state addressing

issues facing our growing senior citizen population. This educational opportunity is free and will provide attendees with a continental breakfast, snacks and a copy of the 2010 Senior Law Day Handbook.

Leadership and commitment in Boulder County agencies and among Boulder County professionals around elder care attracted the Elder Justice Grant, and is bringing forth our first local Colorado Senior Law Day. The Boulder Bar recently formed an Elder Law Committee, co-chaired by Renee Ezer and Martha Ridgway. With this momentum, Boulder County stands a good chance of staying in the vanguard, protecting these vulnerable citizens and providing resources and assistance to their families.

Mimi Goodman is co-chair of the BCBA Tax, Estate Planning and Probate Section. She is taking a sabbatical from her 14-year trust and estate practice and contemplating her next career move.

THANK YOU FOR BEING A MEMBER OF THE BCBA

(continued from page 2)

in the county and state. Through work in the sections or by networking at meetings and social events, members have a strong voice, a voice that is amplified by the number - and stature - of the organization's members.

- Free membership in sections
We have added 2 new sections:
Paralegals and Solo and Small Firm
- Networking and contacts through sections and events
 - Quality affordable CLE programs in all practice areas
 - Find A Lawyer website listings
- Monthly newsletter with educational articles and bar events
- Weekly e-newsletter listing current events and court announcements
 - Annual Membership Directory
 - Bench Bar Retreat
- Court orientation for new/young lawyers
 - Affiniscape Credit Card program
- Solo and Small Firm monthly get togethers
 - Mentor/Mentee Program
 - Access to CU Law Library
- Annual wine tasting fundraiser for Legal Aid Foundation
- Professionalism on-call Committee
- Ways you can reach out to the community
Promoting pro bono legal services through our strong relationship with Boulder County Legal Services
 - High school mock trial annual competition
 - Lawyer in the Classroom

CLASSIFIED ADS

OVERWHELMED WITH WORK BUT DON'T WANT TO BRING IN ANOTHER FULL-TIME PERSON? I can help you with legal research, briefing, marketing pieces, blog postings, trial preparation and organization, office management tasks, and more -- at a low hourly rate! Email me at: megan@hottmanlawoffice.com or visit hottmanlawoffice.com.

BILLING: Experienced and affordable free-lance legal billing available for small firms/sole practitioners. Heather at 303.775.0277 frontrangebilling@gmail.com
www.frontrangebilling.com

HIGH QUALITY, HARD WORKING, EXPERIENCED PARALEGAL needed for busy Boulder litigation firm. Business and Family Law experience highly preferred. Must be organized, a team player, and possess superior technological skills. Salary commensurate with experience. Please send resume to waters@slblaw.com

ONE OFFICE AVAILABLE IN FRESHLY REMODELED OFFICE BUILDING NEAR THE PEARL STREET MALL. Reception, parking space for each office, shared conference and available copier. Call Tonia @ 303-440-1979.

BOOKKEEPING SERVICE: QuickBooks Bookkeeping for small law firms; call 720.272.4056; visit www.sknconsulting.com

MOBILE NOTARY AND CONTRACT PARALEGAL SERVICES. Civil Litigation. ADC/CJA. Real estate transaction. Roz Lynn Dorf, M.A. 303.494.6935.

CONTRACT ATTORNEY. LEGAL RESEARCH AND WRITING. 18 years experience researching and writing appellate briefs in over 100 appeals in civil and criminal cases. Very reasonable. Please call: 303.975.7540 or e-mail bettyb6@earthlink.net.

S. BOULDER OFFICE W/SUITE OF FIVE SOLO PRACTITIONERS. Located at South Boulder Road and the Turnpike. Convenient access to Boulder, Denver, Longmont, Louisville and east county. Free parking, two conference rooms, various amenities. Two offices plus secretarial station available, or combination. Call Steve Cook or staff (303) 543-1000.

OFFICE SPACE AVAILABLE AT 1823 FOLSOM ST. IN BOULDER. Four-office suite on second floor of Folsom Professional Building. Balcony and windows facing mountains. Building wired for Comcast and supports 50mbps downloads. Great location and plenty of free parking. Call 303-447-1144.

PROFESSIONAL OFFICE IN GREAT DOWNTOWN BOULDER LOCATION for rent: \$850 per month includes all utilities, use of conference room, reception area and kitchen. Call 303-443-2626 ext. 7 for more details.



Boulder County Bar Association
1942 Broadway, Suite 205
Boulder, Colorado 80302

Return Service Requested

THE BOULDER COUNTY BAR ASSOCIATION NEWSLETTER IS PUBLISHED MONTHLY BY THE BOULDER COUNTY BAR ASSOCIATION. ARTICLES BY GUEST LAWYERS MAY NOT BE REPRODUCED WITHOUT PERMISSION FROM THE AUTHORS.

Phone: 303.440.4758
1942 Broadway, Suite 205
Boulder, CO 80302
E-mail: christine@boulder-bar.org
www.boulder-bar.org

Executive Director and
Newsletter Editor Christine Hylbert
Executive Assistant Lynne Barnett
Editorial Assistance Barry Satlow

Don't Do Criminal Defense?



Donald Andrews

Sarah Morrison

Alexander Garlin



**GARLIN
DRISCOLL
HOWARD**

245 Century Circle, Suite 101,
Louisville, Colorado 80027
phone: 303-926-4222 fax: 303-926-4224
www.gdhlaw.com

We Do!