



## BOULDER COUNTY BAR NEWSLETTER

# SEPTEMBER 2010

### THE HIRE ACT: A BELATED CHRISTMAS PRESENT FOR BUSINESS OWNERS BY LAURA LEWIS

Ah, the signs of summer break! Heavenly smells wafting from lilac bushes, the view of the greens and blues of the Front Range from the top of Davidson Mesa, hearing birds chirp in the early morning hours, Memorial Day Weekend and the first BBQs of the summer. Back when I was a teenager, these signs also meant it was time to get a summer job. Unlike most teens today, I was expected from age 16 to work during the summer. In fact, I had an early morning paper route before 16 since it was the only job for kids not yet of legal working age. Since I didn't excel in the babysitting arena and certainly wasn't qualified for retail, I looked to the food service industry for summer work. I bussed tables at Perkins (the 10 pm - 3 am graveyard shift), baked, sold (and ate) the cook-

ies at Mrs. Field's in the mall, and waited tables at a Le Français, a now closed French café. All of these jobs paid minimum wage, \$3.35/hour (gasp), and I worked hard for each 35th cent. During college I was a cost accounting intern at AT&T, a teacher's assistant for a college professor and finally an intern at Price Waterhouse in San Francisco.

Guess what? Times have changed. Not only has the wage become much less "minimum," but there aren't as many jobs available these days. Articles in the newspaper and reports on the TV news continue to paint the bleak picture for teens, grads and others who are looking for work. According to statistics released by the Bureau of Labor Statistics on June 4, national unemployment was at 9.7% for May. More than 15 million workers remain unemployed, and long term unemployment continues to be a major part of that figure. Approximately 6.8 million Americans have been unemployed for 27 weeks or longer. More than 431,000 jobs were added in May, but the vast majority of those positions were temporary workers hired for the U.S. Census. In April 2010 Colorado's unemploy-

ment rate was 8%, not far from the state's all-time high of 8.8% in January 1983.

The Obama administration has promised tax hikes in both individual marginal and capital gains rates; however, businesses are getting a break. Recent statute provides some excellent incentives for hiring additional employees who meet certain criteria. The Hiring Incentives to Restore Employment (HIRE) Act, so creatively named, was signed into law by President Obama on March 18.

Since my political savvy consists of dedicated viewing of the television show "The West Wing", I promise not to discuss any political agenda and to focus on the brass tacks of how local businesses can optimize the benefits of the new law.

The HIRE act consists of two primary incentives for businesses to hire unemployed workers:

- A payroll tax exemption; and
- an employer tax credit of up to \$1,000 per worker

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# 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.

### BUILD YOUR AVENUES FOR KNOWLEDGE

The Boulder County Bar Association offers many noon time CLE's on substantive topics produced by its 15 sections and committees. 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 over 1600 members, the Boulder County Bar Association is in a prime position to influence what happened (*Go to page 13*)

## COMPLEX ESTATES

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## BOULDER COUNTY BAR ASSOCIATION ANNOUNCES FORMATION OF NEW ELDER LAW COMMITTEE

By Christine Hylbert and Martha L. Ridgway

It is no secret that our population is rapidly aging. The baby boomers are now in their 50s and 60s, and their parents are in their 70s, 80s and 90s. Consider the following remarkable statistics: In the United States in 2006, there were 37.3 million older adults (age 65+); it is predicted that this population will increase to 40 million this year, and to 55 million in 2020.<sup>1</sup> Approximately one in every eight Americans is an older adult, representing 12.4% of the population.<sup>2</sup> Those who reach age 65 have an average life expectancy of an additional 19.8 years for women and 17.1 years for men.<sup>3</sup>

Clearly, the “graying of America” has resulted – and will continue to result -- in a tremendous impact on every aspect of our lives. As a society, we must grapple with a myriad of problems and dilemmas that accompany aging. For example, how will our current health care system adapt to the burden of an aging population? How will elders’ care be paid for? Will the Social Security, Medicare and Medicaid programs survive under the weight of such a burgeoning older population? What about capacity issues? With the dramatic increase in dementia-related conditions, many older citizens will lose the ability to make their own decisions.<sup>4</sup> The courts will be inundated with guardianships, protective proceedings and will contests. Where will our elders live: at home, in an assisted living facility, in a nursing home? Who will provide the day-to-day care and supervision for our aged? Our population is widely dispersed and often no

younger family members live near their older relatives. Moreover, adult children in the “sandwich generation” (those who are sandwiched between raising their children, advancing their careers, preparing for their retirement and caring for their aging parents and in-laws) often are unable to provide the necessary level of attention and care for their parents. How will the criminal justice system address the staggering increase in elder abuse, neglect and financial exploitation? These are just a few examples of the issues we face as the population continues to age.

In recognition of these statistics and circumstances, as well as the realization that attorneys are dealing with more seniors and issues related to elder law, the Boulder County Bar Association has established a new Elder Law Committee. The co-chairs are Renée Ezer and Martha Ridgway, both of whom have had extensive experience working with the legal problems of the elderly and their families. Renée and Martha appreciate that the Elder Law Committee can present programs not only specific to elder law, but also joint programs with other bar committees whose practices are affected by elder law issues. As an example, earlier this year, the Alternative Dispute Resolution and the Taxation, Estate Planning and Probate committees presented a three-part CLE series addressing the use of ADR in elder law and probate disputes, elder abuse as viewed by the District Attorney’s office and two mediation role plays involving adult children fighting about their father and his

estate. All three presentations were well-attended and well-received.

Desire for information relating to the elderly was also reflected by the August 14th Senior Law Day, held in Longmont, which was co-sponsored by the Boulder County Bar Association. The interest was so great that registration had to be closed at 350 participants, and an additional 50 arrived without having registered in advance. Topics included estate planning, Medicaid planning, the use of ADR in elder and probate disputes, long term care insurance, aging in place and others.

The Boulder County Bar Association is pleased to be on the cutting edge of service to the elderly and the attorneys who represent them. **The first meeting of the new committee is on Tuesday, September 28th, at noon at Dietze and Davis. SIGN UP NOW FOR THIS COMMITTEE!** contact Christine or Lynne 303.440.4758.

### FOOTNOTES

1. <http://ucdenver.edu/aging>; statistics in “Did You Know” box.
2. <http://aoa.gov>; (follow “Aging Statistics” hyperlink; then follow “Profile of Older Americans” hyperlink; then follow “Highlights” hyperlink).
3. Id.
4. In the U.S., 5.3 million people have Alzheimer’s, and a new individual is diagnosed with the disease every 70 seconds. [http://alz.org/alzheimers\\_disease\\_facts\\_figures.asp](http://alz.org/alzheimers_disease_facts_figures.asp); (follow “View full report” hyperlink; then follow “Prevalence” hyperlink; then follow “Prevalence of Alzheimer’s Disease and Other Dementias” hyperlink).

*Martha has practiced law in the Boulder area since 1988, always with an emphasis on elder and disability law. Her current practice is Martha L. Ridgway, P.C.*

## The HIRE Act *(continued from page 1)*

### *Payroll tax exemption*

Qualified employers who hire qualified workers this year (after Feb. 3, 2010 and before Jan. 1, 2011) are forgiven the 6.2% of Social Security taxes due on up to \$106,800 of wages paid to that employee between March 19 and December 31, 2010. This reduced employer tax matching will have no effect on the employee's future Social Security benefits. Employers still need to withhold the employee's 6.2% share of Social Security and Medicare taxes and the 1.45% of employer Medicare matching.

### *Qualified employees MUST*

- Be hired after February 3, 2010 and before January 1, 2011;
- Be unemployed during the 60 days prior to starting work, or worked fewer than 40 hours for someone else during the 60 day period;
- Be hired to fill an existing position of a worker who either left voluntarily or was terminated for just cause; and
- not be a family member, other relative, more than 50% owner or independent contractor.

A sole proprietor or corporation owner's spouse who is a bona fide employee of the business is not a relative and presumably could be a qualified employee.

Qualified employers are:

- new or existing businesses;
  - agricultural employers;
  - tax-exempt organizations;
  - tribal governments; and
  - public colleges and universities.
- Don't get any big ideas about hiring extra nannies or chefs. Congress planned ahead and made household employers ineligible, along with federal and state government employers.

Certain food and beverage employers who claim the "45 B credit," a credit for Social Security and Medicare taxes paid by the employer on certain employee tips, could be eligible for both the payroll tax exemption and the 45B credit if tipped workers are also qualified employees (as defined above) under the HIRE Act. The payroll exemption is taken on Form 941, and the 45B credit is taken on the company income tax return.

The new law requires that the employer receive a signed affidavit from each eligible new hire certifying under penalties of perjury, that he or she was not employed for more than 40 hours for anyone during the 60 days before beginning employment. Employers may use new Form W-11, Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, released by the IRS last month, to meet this requirement. Though employers need this certification to claim both the payroll tax exemption and the new hire retention credit, the statements are not filed with the IRS and instead, are retained along with other payroll and income tax records. Employers should be sure not to use any "other" forms floating around on the internet that won't comply with the IRS requirement. No one in their right mind wants to be on the wrong side of the IRS.

### *Claiming the payroll deduction*

Employers claim the payroll tax benefit on Form 941, federal quarterly employment tax return, which

*(continued on page 10)*



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## PRESIDENT'S PAGE

### The Old Rules Are Not In Effect

BY RICH IRVIN



These are words of wisdom spoken to Ned Racine in “Body Heat.” This is what we need to heed when we practice law. Things are always changing. For better or worse we adapt and change or get steamrolled by the new realities. We must distinguish between which old rules should not be followed, as they have been made obsolete, and those which still have value and remain valid. Some rules never should change in order to remain a civilized society.

Ned Racine, the lawyer in “Body Heat,” didn’t understand the distinction and was bewildered at how he ended up in a cell when he jettisoned all the old rules. I chose “Body Heat” as my second movie tangentially about the law. It’s a great “film noir,” with enough twists and turns to make you dizzy. Plus, it has Kathleen Turner as Matty Walker and William Hurt as Ned Racine. If their interaction doesn’t

raise your body temperature, you need to see a doctor. “Body Heat” is a perfect movie for the summer, R-rated, with sex, adultery, murder and pre-nuptial agreements---a perfect movie for the domestic relations bar.

It is also about the practice of law. It reminds us that things are not always what they seem. When Ned Racine meets Matty Walker, he thinks he has control, later he is played like a violin. It turns out he is not as smart as he thinks he is. As Matty says to him, “You’re not too smart. I like that in a man.”

I originally chose “Body Heat” because it’s the only movie I know

that has at its center the Rule against Perpetuities. Who would expect probate law to be sexy? I won’t spoil the movie by telling you why, but a violation of the rule provides a windfall to the grieving widow. The film touches not only on probate law, but malpractice, tort law, domestic and criminal law. It really is an overview of the classes you took in your first year of law school. It’s also more fun. You should get several ethics credits for counting the ethical violations.

As a criminal defense attorney, I had forgotten the interaction between Ned Racine and the court, district

*(continued on page 8)*

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## CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Register by e-mailing [lynne@boulder-bar.org](mailto:lynne@boulder-bar.org), or pay online with a credit card at [www.boulder-bar.org/calendar](http://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.

### Thursday, September 9 Intellectual Property Law

Trademark Prosecution and Licensing  
Tips

Presenter: Andrew Roppel  
Noon at Hutchinson Black & Cook  
1 CLE \$20, \$10 new/young lawyers  
Lunch \$10 (turkey, veggie, club or  
salad w/ or w/o meat)

### Friday, September 10 Availability of Legal Services

Noon Brownbag lunch  
at Boulder County Legal Services

### Tuesday, September 14 Employment Law

ADA  
Presenter: Seth Benezra  
Noon at Caplan and Earnest  
1 CLE \$20, \$10 new/young lawyers  
Lunch \$10 (turkey, veggie, beef or  
salad w/ or w/o meat)

### Wednesday, September 15 Real Estate Section

Roads: Public or Private  
Presenter: Leslie Lacy,  
Asst. County Attorney  
Noon at The Cork  
\$15 Lunch, \$20 CLE  
\$10 New/young lawyers

### Wednesday, September 15 Family Law

Services Available at the  
Boulder County Child Support  
Enforcement Unit  
Presenters: Assistant County Attorneys  
Pamela Howell and Rhonda Rawlinson  
Noon brownbag at the Boulder  
Justice Center Courtroom F  
1 CLE \$20, \$10 new/young lawyers

### Thursday, September 16 New/Young Lawyer Happy Hour

5:30 PM at The Med  
Walnut Street in Boulder

### Tuesday, September 21 Paralegal Section and All Lawyers

Effective Billing Practices and  
Capturing More of Your  
Billable Time  
Presenter: Reba J. Nance,  
CBA Director of Law Practice  
Noon at Caplan and Earnest,  
1 CLE \$20, \$10 for new/young lawyers  
Lunch \$10 (turkey, veggie, club or  
salad w/ or w/o meat)

### Thursday, September 23 Louisville Lafayette Happy Hour

5:30 PM at The Old Louisville Inn

### Tuesday, September 28 Elder Law Committee

Addressing Current Issues in Elder Law  
Noon at Dietze and Davis,  
2060 Broadway, Suite 400  
1 CLE \$20, \$10 new/young lawyers  
Lunch \$10 (turkey, veggie, club or  
salad w/ or w/o meat)

### Wednesday, September 29 Tax, Estate Planning & Probate

Drafting Outside the Prudent Investor  
Act -- Is It Prudent  
Presenter: Dennis Whitmer  
Noon at Hutchinson Black & Cook  
1 CLE \$20, \$10 new/young lawyers  
Lunch \$10 (turkey, veggie, club or  
salad w/ or w/o meat)

### PLEASE NOTE

**LEGAL SPANISH CLASSES  
LEVEL I AND II  
WILL BEGIN ON OCTOBER 5  
AND CONCLUDE ON NOVEMBER 23.  
WATCH FOR MORE DETAILS IN THE  
WEEKLY E-BRIEFS.**



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**Boulder County Bar Foundation  
grant applications are now being  
accepted for law related programs  
planned for 2010-2011.  
The deadline is September 15.**

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](http://www.boulder-bar.org)  
to download the grant application

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## LAWYER ANNOUNCEMENTS

### **Congratulations to Judge Thomas Reed**

**recipient of the  
2010 County Court  
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**Judge Reed will receive his award  
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## PRESIDENT'S PAGE *(continued from page 5)*

attorney and police. I think people are always surprised to find that usually there is not a personal antagonistic relationship between prosecutors, police and defense attorneys. We're all just doing our jobs and we're better lawyers if we keep our emotions at arms length. We also get better results for our clients.

Ned forgot all the rules. He got too close to his potential client. R-rated too close. He violated a cardinal rule. His client, Mickey Rourke gave him some sage advice that should be given to all potential criminals, "There are 50 ways to get caught, and if you can think of 25 you're doing well, and you're not a genius."

Ned gets in over his head because he only sees what he wants to see. He misses clues that are obvious in hindsight. If he had heeded them it would have prevented his disaster. How often when we look at a case or a client, we see what we want to see.

We don't step back and put our minds on pause and think, instead we act to our detriment.

As Ned found out, not all the old rules have been thrown out. Some have been changed, but others remain. The times are a-changing. We can fight to maintain the status quo or meet the challenge of the new rules and times. We have new challenges but also new opportunity. But with change we also have to be careful to distinguish which rules should be jettisoned and which must remain in effect. Rules like justice, the rule of law, treat people with respect, etc., and most importantly the Rule against Perpetuities still apply. Ned thought that all rules were gone and ended up in a cell.

Our job as lawyers is to change with the times but remember and live by the values that don't change. We need to distinguish between rules that should change and those that

we need to live by to be a civilized society. Lawyers are uniquely attuned to do things. Just watch Body Heat to see what happened when a lawyer doesn't.

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## PRO BONO PAGE

### Pro Bono Referrals

Ten cases were referred during July. Thank you to the following attorneys:

Norm Aaronson  
Brandon Fields  
Joseph French  
Brad Hall  
Jon Sirkis  
Craig Small  
Norm Aaronson - CULADP  
Colene Robinson - CU Juvenile Law Clinic

Thanks to the following attorney accepting a mentorship during July: **Mike Miner**

### Pro Se Program Volunteers

Elizabeth Brodsky  
Sheila Carrigan  
M.L. Edwards  
Judson Hite  
Lauren Ivison  
Chris Jeffers  
Tucker Katz  
Leonard Tanis

### BCAP Volunteers

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

**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

|          |               |              |
|----------|---------------|--------------|
| Sept. 6  | Bruce Fest    | 303.494.5600 |
| Sept. 13 | Trip DeMuth   | 303.447.7775 |
| Sept. 20 | Lee Strickler | 303.443.6690 |
| Sept. 27 | Mark Langston | 303.440.9684 |



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## The HIRE Act *(continued from page 4)*

has been revised for use beginning with the second calendar quarter of 2010. Any credit for wages paid March 19 - 31, which would have been reported on the 1st quarter 941, will be claimed on the 2nd quarter return. Since the deadline for the 2nd quarter Form 941 is July 31, be sure you have the revised form. If you use a payroll service, be sure they have the updated form.

### *New hire/employer retention tax credit*

In addition, for each new worker who is retained for at least a year and whose wages did not significantly decrease in the second half of the year, businesses may claim an additional general business tax credit equal to the lesser of \$1,000 or 6.2% of wages paid each retained worker.

A retained worker must be employed by the taxpayer for at least 52 consecutive weeks, and one whose wages during the last 26 weeks of the period equaled at least 80% of the wages for the first 26 weeks. Wages includes all remuneration (other than fees paid to a

public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash. Compensation that isn't subject to income tax withholding, such as certain fringe benefits and wages paid to certain types of employees that are exempt from income tax withholding, won't qualify as wages for purposes of the up-to-\$1,000 credit.

The credit will be available when the employer files its 2011 income tax returns. Since the HIRE Act increases the current year general business credit (reported on Form 3800), the credit cannot exceed tax liability and won't be allowed to offset a taxpayer's alternative minimum tax (AMT). The good news is that while the credit cannot be carried back, it may be carried forward for 20 years to be utilized by the business tax return in a subsequent year.

Business owners who hire qualifying workers sooner rather than later will get the most out of the tax credits, as the credits diminish

over time and disappear completely by January 1, 2011. The maximum benefit obtained under this plan is \$7,622 per employee. The HIRE Act may be used in conjunction with many other tax credits but not the Work Opportunity Tax Credit. This provides eligible employers with a tax credit up to 40 percent of the first \$6,000 of first-year wages of new employees who are part of a "targeted group." Examples of such targeted group employees, among others, include veterans, ex-felons, high-risk youth, vocational rehabilitation referrals, summer youth employees, disabled individuals, and food stamp recipients.

Is the HIRE Act going to keep the texting teens off the summer streets and pluck out the older unemployed from their lounging positions in coffee shops? Is it the quick fix to catapult us out of our economic strife? Realistically, no, but the HIRE Act may help employers who are on the fence about whether to bring in that extra worker or two. Moreover, employers that move quickly to hire will receive a larger tax credit than businesses that wait until later this year. The important thing is that it is a step in the right direction because we all know that Rome wasn't built in a day. ]

*Laura Lewis, CPA, M.S. Kingsbery, Baris Vogel Nuttall, CPAs and Advisors in Boulder.*

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*(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 and one committee: Paralegals, Solo and Small Firm and Elder Law Committee
- 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
- Affiniscape Credit Card program
  - Sob and Small Firm monthly get togethers
- Raising The Bar 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
- High school mock trial annual competition
- Lawyer in the Classroom
  - Legal Assistance clinic at the Boulder Homeless Shelter (KLACH)
- Habitat for Humanity
- Reduced Fee Lawyer Referral list
  - Law Day on May 1  
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