

SIDE BAR: BUILDING LEGAL TEAM AND CLIENT RELATIONSHIPS THAT THRIVE

Please join us for the monthly Side Bar CLE. This month's presentation, Effective Communication and Conflict Management to Build Relationships that Thrive with Sharla Macy, CEO of Sharla Macy @ Associates and Quest EAP, and Beth Brown Ornstein, JD, Mediator.

In this interactive presentation, participants will begin to assess and learn strategies for improving relationships within their legal teams, including attorneys and staff, as well as their legal team's relationships with clients. Sharla Macy will provide an overview of the principles from the research of John Gottman and the Gottman Institute of what makes team relationships thrive. Beth Brown Ornstein will introduce tools for developing listening skills to help legal teams communicate more effectively with clients to meet their needs and to help prevent and minimize conflict between co-workers and with clients.

Thursday, March 12 | CLE 4:00 - 5:00 PM, Social Hour 5:00 - 6:00 PM

[Please click here to register](#)

Justice For
All Ball
Page 7

IN THIS ISSUE

CALENDAR OF EVENTS 2
PROBATE PRO SE VOLUNTEERS 3
WELCOME NEW MEMBERS 3
PRESIDENTS PAGE 4
FIVE FIRST ACTIONS FOR ESTATE PLANNERS 5-6
JUSTICE FOR ALL BALL 7
PROFESSIONALISM & PRO BONO 8
LAWYER ANNOUNCEMENT 9
CLASSIFIEDS 10



CALENDAR OF EVENTS

Thursday, March 5

LONGMONT CLE

Cryptocurrency Law & Legal Ethics Concerns

Presented by Micah Schwalb

12:00 - 1:00 PM @ Dickens Tavern (300 Main Street)

\$41 CLE and lunch, \$31 New Lawyer, \$16 Lunch only

Please click here to register

Friday, March 6

JUSTICE FOR ALL BALL

7:00 - 10:00 PM @ Boulder JCC (6007 Oreg Ave)

\$75 Tickets

Please click here to register

Thursday, March 12

ALL SECTIONS SIDE BAR CLE

Building Legal Team and Client Relationships

Presented by Sharla Macy and Beth Brown Ornstein

4:00 - 6:00 PM @ BCBA Offices (3269 28th Street)

\$35 CLE and social, \$20 New Lawyer, \$10 No CLE

Please click here to register

Monday, March 16

CIVIL LITIGATION CLE

Business Development Strategies for Litigators

Presented by Michelle Rafik

4:00 - 6:00 PM @ BCBA Offices (3269 28th Street)

\$35 CLE and social, \$20 New Lawyer, \$10 No CLE

Please click here to register

Tuesday, March 17

TAX & ESTATE PLANNING CLE

Charitable Planning: Advanced Giving Strategies & Stories

Presented by Rachel Radford, Mark Ricketson, Katy Herbert Kotlarczyk, and Amanda Hopkins

12:00 - 1:30 PM @ BCBA Offices (3269 28th Street)

2 CLE - \$35 CLE and social, \$20 New Lawyer, \$10 No CLE

Please click here to register

Wednesday, March 18

FAMILY LAW CLE

Child Support Updates

Presented by MariaJose Delgado

3:00 - 4:00 PM @ BCBA Offices (3269 28th Street)

\$35 CLE and social, \$20 New Lawyer, \$10 No CLE

Please click here to register

Thursday, March 19

CRIMINAL CLE

Handling Cases Involving Alleged Unlawful Sexual Conduct

Presented by Denise Metz and Gary Reser

11:30 - 1:30 PM @ BCBA Offices (3269 28th Street)

\$45 CLE and social, \$25 New Lawyer, \$15 No CLE

Please click here to register

Thursday, March 19

FREE LEGAL CLINIC IN BOULDER

5:30 PM @ BCBA Offices (3269 28th Street)

Please click here to volunteer

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William R Meyer, Esq
Michelle H Shepston
Christoph M Sullivan, Esq
Emily Foster

PROBATE PRO SE CLINIC VOLUNTEERS

Thank you to all who volunteered their time for the Probate Pro Se Clinic. Five Pro Se Clinics were held in January 2020.

Shawn Ettingoff
Josh Anderson
Tucker Katz
Patricia Riley

**Invest in justice.
Invest in the future.
Invest in the community.**



**BOULDER COUNTY BAR
FOUNDATION**

The Boulder County Bar Foundation is a 501(c)(3) that invests donations from its Fellows in an endowment fund, the proceeds of which are awarded to legally-related 501(c)(3) organizations in Boulder County. Grants have regularly been awarded to help fund legal services for low income, immigrant and displaced members of the community; high school mock trial teams and court-ordered co-parenting classes as well as court access for victims of domestic violence. The Foundation always has grant applications for more than it can give. Become a Fellow and help grow the endowment - it's good for justice, it's good for the future, it's good for the community and it's good for you.

**Invest in yourself.
Become a Foundation Fellow today.**

PRESIDENT'S PAGE

JENNIFER LORENZ

On May 16, 2019 Governor Jared Polis signed The Human Right to Work With Dignity Act (HB-1267) into law. The Act reclassifies an Employer's intentional nonpayment of more than \$2,000 of Employee wages as felony theft. The Bill went into effect on January 1, 2020.

The Colorado human trafficking council's 2018 annual report to the general assembly found that: "(I) Between 2015 and 2017, state prosecutors filed 129 cases using the new human trafficking statutes, only one of which was for labor trafficking; (II) Victims of labor trafficking, like those of sex trafficking, should not be seen as complicit in their victimization and are worthy of justice; (III) Persons who commit the crime of human trafficking often commit other crimes such as wage theft, tax evasion, and workers' compensation fraud, which drains local and state resources, as well as denies the state its right to revenue; (IV) A comprehensive approach is needed to address the crime of labor trafficking; and (V) A bill enacted by the general assembly to recognize labor as a thing of value that can be subject to theft would aid law enforcement in combating the crime of labor trafficking." (citation here) The Act's purpose is to close loopholes that allow for the exploitation of human labor for profit.

The Act amended the definition of the term Employee under the Colorado Wage Act to now include, "any person, including a migratory laborer, performing labor or services for the benefit of an employer. For the purpose of this article 4, relevant factors in determining whether a person is an employee include the degree of control the employer may or does exercise over the person and the degree to which the person performs work that is the primary work of the employer; except that an individual primarily free from control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an 'employee'" C.R.S § 8-4-101 (5).

This amended definition of the term Employee removed the previous requirement that an Employer command when, where, and how much labor or service the Employee performed.

The Act also amended the definition of "Employer" under the Colorado Wage Act so that it, "has the same meaning as set forth in the federal "Fair Labor Standards Act", 29 U.S.C. sec. 203(d), and includes a foreign labor contractor and a migratory field labor contractor or crew leader;

except that the provisions of this article 4 do not apply to the state or its agencies or entities, counties, cities

and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado." C.R.S § 8-4-101 (6).

The Fair Labor Standards Act's broader definition of "Employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization." 29 U.S.C.A. § 203(d).

Most significantly the Act amends the criminal penalties for Employers who willfully violate the payment requirements found in the Colorado Wage Act. Specifically, C.R.S. 8-4-114 now states that: "(1) Any employer who violates the provisions of section 8-4-103(6) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment. (2) In addition to any other penalty imposed by this article 4, any employer or agent of an employer who willfully refuses to pay wages or compensation as provided in this article 4, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure for himself, herself, or another person any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, coerce, delay, or defraud the person to whom such indebtedness is due, commits theft as defined in section 18-4-401."

C.R.S. 18-4-101 defines theft in the amount of more than \$2,000 as a felony. The Act has emphasized the importance of the proper classification of an Employee vs. an independent contractor and has made critical the payment of all wages owed to Employees.



FIVE FIRST ACTIONS FOR ESTATE PLANNERS POST SECURE ACT

LISA C. WILLCOX

The “Setting Every Community Up for Retirement Enhancement Act of 2019,” known as the SECURE Act (the “Act”) drastically changes how qualified retirement plans are paid out to beneficiaries after a plan participant’s death.^[1] Perhaps the largest change the Act makes in the estate planning context is eliminating the “stretch” treatment for most non-spousal beneficiaries. Under the Act, new subparagraph (H) to Internal Revenue Code (IRC) § 401(a)(9) directs that plans be distributed within 10 years following the death of the plan participant, unless the beneficiary is an “eligible designated beneficiary” (“EDB”).^[2] These changes to the IRC were effective on January 1, 2020.^[3]

The new rules will likely change how estate planners advise clients in planning for these assets, require changes to language in form wills and trusts, and necessitate reviews and amendments to existing plans that would otherwise lead to unintended income tax and distribution consequences under the new rules. Here are five first actions estate planners can take now to start down this new path:

1) Educate Yourself. Although the Act has been covered in many news articles and email blasts, these only begin to skim the surface of the changes the Act creates for

planning for retirement assets, and many questions remain unanswered. Estate planners should seek out continuing legal education opportunities and additional materials to learn more about the Act and its impact on their practice, and to continue to do so well into the future.^[4] A good place to start is reading the language of the Act itself. The Act was signed into law on December 20, 2019, in Division O of the “Further Consolidated Appropriations Act, 2020”, P.L. 116-94.^[5]

2) Take a Deep Breath. The good news is that planning for a surviving spouse remains relatively unchanged under the Act, as a surviving spouse is the first of five categories of EDBs.^[6] In fact, placing retirement assets in a conduit trust solely for the benefit of a surviving spouse is now less disadvantageous from an income tax perspective under the Act than it was previously. Now, most beneficiaries of a spousal rollover IRA will be subject to the 10-year rule, rather than the life expectancy rule, which is the same result that occurs upon termination of a conduit trust for the benefit of a surviving spouse.^[7]

3) Check for RMD Woes. Problems may arise if trust language for retirement assets limits the trustee to **only** withdraw the required minimum distribution from a retirement plan under the rules and regulations of IRC §



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POST SECURE ACT CONTINUED

401(a)(9). Under the new rules of the Act, this language could lead to the unintended result that requires the entire retirement plan is distributed in the 10th year following the plan participant's death, rather than distributed over the entire 10-year distribution period. A distribution only in the 10th year could result in a large income tax bill to the trust in the 10th year, or possibly a much-larger-than-anticipated distribution and tax bill to a conduit trust beneficiary.^[8] If the trustee has discretion to withdraw amounts from the plan in addition to the required minimum distribution, the trustee will be able to mitigate these results, withdrawing from the plan gradually over 10 years. Adding trustee discretion to make withdrawals where needed could be a good place to start updating form language as a result of the Act.

4) Remove Retirement Asset Pot Trusts (For Now). Another common scheme in existing plans and forms may be multi-beneficiary "pot trusts" for minor beneficiaries holding retirement assets. Under the Act, a minor child of the plan participant is considered an EDB, eligible for life expectancy payouts of a retirement plan while still a minor.^[9] Commentators agree that a properly drafted conduit trust for one minor child of the plan participant will be entitled to life expectancy payouts during the child's minority, although the remainder of the plan will need to be withdrawn and paid out to the child within 10 years after the child reaches the age of majority.^[10] What is unknown is whether a pot trust for multiple minor children of the plan participant will be allowed to use the life expectancy of, for example, the oldest child during that oldest child's minority. For now, it may be safest to use separate conduit trusts for each minor child if obtaining the stretch treatment during the minority years is the goal.^[11]

5) Revisit Accumulation and Conduit Trusts. Planners may have had a favorite type of see-through trust in the pre-Act era they believed worked best for the majority of their clients. Planners who favored accumulation trusts to avoid paying out required minimum distributions to beneficiaries may now consider conduit trusts for EDBs such as spouses, minor children, and individuals less than 10 years younger than the plan participant, in order to retain life expectancy stretch treatment.^[12] Planners who preferred conduit trusts due to clearer regulatory authority and more flexibility in naming remainder beneficiaries may now view accumulation trusts as the best tool for non-EDBs. Because the 10-year rule will apply to either properly-drafted trust type for non-EDBs, the ability for the trustee to retain plan withdrawals for asset protection purposes will be more attractive now,

especially knowing the trustee can also manage distribution decisions considering the income tax consequences to the trust and the beneficiary.^[13]

^[11] This article assumes a certain background knowledge on planning for retirement assets under the old regime, particularly with trusts. For more information or to obtain this knowledge, most of which will still be needed post-Act, see Natalie B. Choate, *Life and Death Planning for Retirement Benefits* (8th ed. 2019).

^[12] § 401(a)(1), Div. O, of P.L. 116-94 (cited hereafter as SECURE Act); IRC § 401(a)(9)(H) (as amended by the Act)

^[13] SECURE Act § 401(b)(1). See (b)(2)-(4) for the exceptions to the January 1, 2020 effective date.

^[4] Natalie Choate, the leading authority on estate planning with retirement assets, has materials available at her website, www.ataxplan.com, and there is a sign up for email notifications of any future updates to the materials.

^[5] P.L. 116-94 is currently available in the enrolled act form; click here to view.

^[6] The five categories of EDBs are: (1) surviving spouse of the plan participant; (2) a minor child of the plan participant during the period of minority; (3) a disabled beneficiary; (4) a chronically ill beneficiary; and (5) a beneficiary who is not more than 10 years younger than the plan participant. SECURE Act § 401(a)(2); IRC § 401(a)(9)(E)(ii) (as amended by SECURE Act).

^[7] See Natalie B. Choate, *SECURE's Changes to Retirement Plan Distribution Rules Applicable to Participants and Beneficiaries, PLUS: Proposed New Life Expectancy Tables*, at 15-16 (January 21, 2020); click here to view. Note that this is would not be the case if there are any beneficiaries who would be EDBs of a spousal rollover IRA who would lose out on that opportunity as remainder beneficiaries of the conduit trust for a surviving spouse. See IRC § 401(a)(9)(H)(iii) (as amended by SECURE Act).

^[8] ACI-CLE and the American College of Trust and Estate Counsel, *The SECURE Act: Who are You and What Have You Done With My Minimum Distribution Rules?*, Telephone Seminar/Audio Webcast (February 13, 2020).

^[9] IRC § 401(a)(9)(E)(ii)(II).

^[10] IRC § 401(a)(9)(E)(iii); Choate, *supra* note 7 at 17. The benefits need to be paid out to the child during the entire duration of the trust to properly qualify as a conduit trust, including the 10 year period after the age of majority. *Id.*

^[11] Choate, *supra* note 7 at 17. Alternatively, some planners may now look to accumulation trusts for minors, accepting a 10-year payout in exchange for the trustee's ability to accumulate withdrawals for future distributions.

^[12] *Id.* at 16, 17-18, and 21-22.

^[13] Accumulation trusts are also now specifically allowed for disabled and chronically ill beneficiaries, a topic beyond the space constraints of this newsletter. See Choate, *supra* note 7 at 21, for more details on what is known so far.

Lisa C. Willcox is an associate attorney at Hutchinson, Black and Cook, LLC in Boulder whose practice focuses primarily on estate planning and probate administration. She is a current co-chair of the BCBA Taxation, Estate Planning, and Probate Section.

2020 Boulder County Bar Foundation



JUSTICE FOR ALL BALL

Friday, March 6 at 7 pm

Boulder JCC

6007 Oreg Avenue, Boulder

PURCHASE YOUR TICKETS HERE

About JFAB

18 years ago, the Boulder County Bar Association started a fundraiser called Food Wine Jazz Art to benefit Colorado Legal Services. While this event was a great success, recent cuts to the federal budget made us realize three years ago that we needed to rebrand our event to draw a larger crowd and raise even more money for legal services.

The 2018 Boulder County Justice For All Ball was the beginning of our new era. We kept the event geared toward the legal community, but expanded further to include partners, clients, and friends. We held the event on a weekend evening to accommodate those who find a weeknight event hard to attend and brought in members who have never attended a bar function. The event was a huge success.

This year, we are excited to move to the Boulder JCC. This is an ideal venue for our event! We will have music and dancing led by the Diamond Orchestra. Their fun, sophisticated and soulful ensemble keeps guests of all ages and tastes entertained at the top venues in Colorado and beyond. There will also be a silent auction with some fabulous opportunities.

Hors d'oeuvres will be available along with delicious desserts from Front Range Catering.

This year continues to bring new sponsorship opportunities if you are unable to attend but still want to contribute to a worthy cause. We are asking for Young Lawyer and Paralegal sponsorships to allow those that might not have the funds in their budget to purchase a ticket.

PROFESSIONALISM ON CALL

March 2	Anton Dworak	303.776.990
March 9	Steve Clymer	303.530.2137
March 16	Mike Rafik	303.444.9292
March 23	Gwyn Whalen	303.443.8010
March 30	Lee Strickler	303.443.6690

The Professionalism Committee assists lawyers, clients, and other members of the community with questions or complaints about behavior by lawyers that fails to meet generally accepted standards of professionalism and courtesy, or that is contrary to the BCBA Principles of Professionalism.

The Professionalism Committee does not address allegations of criminal or ethical violations by lawyers, as regulated by the Colorado Rules of Professional Conduct, and any such violations should be addressed to the Office of Attorney Regulation Counsel.

BOULDER COUNTY FREE LEGAL CLINIC

The dates have been set for the 2020 Free Legal Clinics at the BCBA Office (3269 28th Street, 2nd Floor), the Lafayette Senior Center (103 Iowa Avenue), and the Longmont Senior Center (910 Longs Peak Ave) from 5:30 - 7:30 pm. Volunteers are always needed. Please contact Laura at laura@boulder-bar.org if you can help in Boulder or Lafayette, or susan.spaulding@longmontcolorado.gov if you can help in Longmont.

Lafayette: April 14, July 14

Longmont: May 19, August 25

Boulder: March 19, June 18, September 17, December 17

THANKS TO OUR VOLUNTEERS

The Longmont Free Legal Clinic was held on February 25. Thank you to the attorneys who were able to serve as volunteers:

Autumn Nelson	Ken Platt	Jodi Martin
Ben Thompson	Lance Goff	Veronica Garcia
Beth Montague	Laurel Herndon	Adrianna Perea
Don Alspaugh	Dan Droege	Manuela Chavez
Eric Maxfield	Sarah Pheral	Claudia Lopez
Erica Gajda	Steven Janssen	
Jeff Larson	Carla Crapster	

PRO BONO REFERRALS

Nine cases were referred during the month of January. Thank you to the following attorneys:

Autumn Nelson
Heather Kurland
Rick Romeo
Susan Bryant
James Carpenter (x2)
Heather Rutherford
Kurt Hofgard

PRO SE VOLUNTEERS

Shawn Ettingoff
Josh Anderson
Tucker Katz
Patricia Riley

PRO BONO CORNER

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LAWYER ANNOUNCEMENTS



We proudly welcome **Julie D. Myers** as a Senior Associate.



Ms. Myers' practice focuses on estate planning, probate administration, business & succession planning as well as contracts. Ms. Myers brings twenty-three years of legal experience to our firm.

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BOULDER ATTORNEY POSITION AVAILABLE. AV-Rated Boulder law firm seeking attorney with at least 5 years of experience in estate planning, probate, tax and small business law. Candidate should have excellent academic credentials, and experience in drafting, estate and trust administration, client communications and research skills. L.L.M. in Taxation or CPA preferred. To apply, please submit résumé with cover letter and writing sample to shelly@sdmerrittlaw.com.

PARALEGAL - REAL ESTATE. Position Overview: Under the direction of Real Estate lawyers, this position will assist attorneys in rendering legal services in the area of commercial real estate and acquisitions, real estate finance, leasing, and real estate development. [Please click here to apply.](#)

LITIGATION ATTORNEY. Fredericks Peebles & Patterson LLP, a national law firm specializing in Federal Indian law, seeks an attorney with 5+ years litigation experience to join our office in Louisville, Colorado. Our firm handles a

range of cases for Indian tribes, tribal entities, and individual tribal members. The successful applicant will be expected to handle a range of civil cases through all stages of litigation in tribal, state and federal forums. Experience with oil/gas, water law, environmental and commercial litigation is a plus. Preference will be given to attorneys who are enrolled members of Federally recognized Indian tribes. Applicants must be licensed to practice law in at least one state, and willing to become licensed in Colorado. The Firm offers a total compensation package with starting salary DOE. Please send a resume and references to Debra Foulk at dfoulk@ndnlaw.com by Friday, February 28, 2020.

TRANSACTIONAL POSITION AVAILABLE. Stinson LLP seeks a highly motivated transactional attorney with 3-5 years of experience for our Denver office. Excellent academic credentials, strong writing, analytical, organizational, research and communication skills required. Cover letter, resume, transcript and writing sample required. Apply on-line at <https://bit.ly/2qMWGzA>. For more information, visit www.stinson.com or contact Eleanor McCall at recruiting@stinson.com.

OFFICE SPACE FOR LEASE. Boulder: 2400 Broadway. Beautiful brand-new downtown office spaces in building owned by on-site immigrant rights attorney. Construction to be complete February 2020. Conference room, kitchen, shower, bike storage, basement storage and parking available. Walk to Pearl, Sanitas, Ideal Market. \$1100-\$1500. Brandt Milstein - brandt@milsteinlawoffice.com

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BCBA JOBS BOARD NOW ACTIVE

We have added a Jobs Board and classified page to the BCBA website; [please click here to view](#). Do you have a job posting or classified you would like listed on the BCBA Jobs Board? The pricing for these listings is for 30 days: \$40 for current BCBA members, \$60 for non-members. Submitted listings will also run in the BCBA newsletter. [Please click here](#) to submit your listing.

Boulder^{COUNTY} BAR ASSOCIATION

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