

## MARCH SIDE BAR PRESENTATION

Please join us for our March Side Bar presentation **Criminal Justice Updates & Improvements in 2021**, presented by Boulder County District Attorney Michael Dougherty and Boulder County Sheriff Joe Pelle.

Colorado passed a sweeping law enforcement accountability bill last summer, and lawmakers are working to strengthen that law during this year's legislative session. District Attorney Michael Dougherty and Sheriff Joe Pelle will discuss the current efforts underway in the state legislature to address criminal justice reform. They will also highlight ongoing efforts within Boulder County to combat implicit bias and racial inequity in the criminal justice system.

The March Side Bar will be held on Thursday, March 11 at 4:00 pm in the BCBA Zoom Meeting Room. The virtual link and presentation materials will be sent out the day prior to the event.

Justice For  
All Ball  
Page 3

[Please click here to register](#)

## IN THIS ISSUE

CALENDAR OF EVENTS 2

JUSTICE FOR ALL BALL 2021 3

PRESIDENTS PAGE 4

NATURAL RESOURCES ARTICLE 5-6

EVICTIION ASSISTANCE ANNOUCEMENT 6

PROFESSIONALISM & PRO BONO 7

CLASSIFIEDS 8



# CALENDAR OF EVENTS

**Wednesday, March 10**

**INTELLECTUAL PROPERTY CLE: A MUTUAL NDA TEMPLATE - IT REALLY EXISTS AND WORKS! (ACCEPTED FOR USE BY UNIVERSITIES, FEDERAL LABS AND COMMERCIAL ENTITIES)**

**Presented by Halina Dziewit**

12:00 - 1:00 PM CLE @ BCBA Zoom Meeting Room  
\$25 CLE | \$15 New/Young Lawyer | \$10 No CLE  
Please click here to register

**Thursday, March 11**

**SIDE BAR CLE: CRIMINAL JUSTICE UPDATES & IMPROVEMENTS IN 2021**

**Presented by District Attorney Michael Dougherty and Sheriff Joe Pelle**

4:00 - 5:00 PM CLE @ BCBA Zoom Meeting Room  
\$25 CLE | \$15 New/Young Lawyer | \$10 No CLE  
Please click here to register

**Wednesday, March 31**

**NATURAL RESOURCES CLE: WATER RIGHTS DUE DILIGENCE IN REAL ESTATE TRANSACTIONS**

**Presented by Jeffrey J. Kahn and Kara N. Godbehre**

12:00 - 1:00 PM CLE @ BCBA Zoom Meeting Room  
\$25 CLE | \$15 New/Young Lawyer | \$10 No CLE  
Please click here to register

**Thursday, April 1**

**CIVIL LITIGATION & ALTERNATIVE DISPUTE RESOLUTION CLE: "GREAT - YOU GOT YOUR CASE SETTLED IN MEDIATION - OR DID YOU?"**

**Presented by Rob Gunning, Doug McQuiston, and Doug Stevens**

12:00 - 1:00 PM CLE @ BCBA Zoom Meeting Room  
\$25 CLE | \$15 New/Young Lawyer | \$10 No CLE  
Please click here to register

**HOME STUDY CLE: ROUNDTABLE WITH THE DISTRICT ATTORNEYS**

**Presented by District Attorney Michael Dougherty and Deputy DAs Ken Kupfner and Christine Rinke**  
Please click here to register

**HOME STUDY CLE: USING COLORADO'S NEW ANTI-SLAPP LAW TO PROTECT VICTIMS OF ABUSIVE LITIGATION**

**Presented by Kazi Houston**  
Please click here to register

**HOME STUDY CLE: SELF-CARE (A.K.A. SELF-PRESERVATION) FOR LAWYERS**

**Presented by Michelle Rafik**  
Please click here to register



**David  
Driscoll**

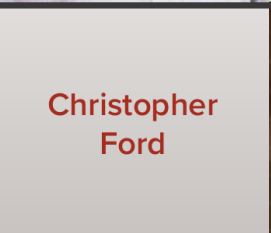


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# 2021 Boulder County Bar Foundation



## JUSTICE FOR ALL BALL

Saturday, March 6

7:00 pm to 9:00 pm

Virtual Attendance via Zoom

*Welcome and introduction from Brad Hall, BCBF president*

*Music from Jessica Ahmed of The Diamond Orchestra*

*Testimonials from Boulder County Legal Services clients*

*Remarks by Justice Maria Berkenkotter of the Colorado Supreme Court*

*Keynote address by Attorney General Phil Weiser*

*Music from AWD featuring Justin Konrad from Hutchinson Black and Cook*

*Virtual musical bingo to determine the winner of the Wine Wagon*

[Click here to register](#)

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Raymond James, Sacha Millstone

# PRESIDENT'S PAGE

## JEFF ROSE

### A Message of Gratitude

As of next Friday, we'll have been on a nation-wide pandemic protocol for a year. A year of remote trials and hearings, Microsoft Remote Desktop, VOIP-ring-to-cell, and virtual everything. Some of us have enjoyed successful years despite the pandemic. Others have endured some of the most challenging and lean years imaginable. We've all experienced unforeseeable personal challenges, ranging from hosting a one-room school inside our remote law offices, to finding new methods of dissipating the stress of our work.

As we head into pandemic year two, I want to recognize and express my gratitude to those who make it possible for us to get through each day. On behalf of the bar, I want to thank our judicial officers – and their courtroom staff in particular – for bending over backwards to keep our cases moving through the system. I want to thank our paralegals, legal assistants, and office staff, who embraced the ability to work remotely while continuing to show up for their essential roles of will signings, powers of attorneys, living wills, and the like. I'm grateful for the spouses, family members, and bubble-mates whose comradery provides the necessary sanity to continue with this distancing.

I'm especially grateful for Laura Ruth and Kyle Mares, whose work at the BCBA has helped us to thrive under the strangest of circumstances. Laura and Kyle crammed a decade of evolution into a few hours. They immediately pivoted the bar to a remote platform,



complete with near-daily programming to help us deliver quality, pandemic-related legal services to our clients. The work they did to move our programming online is borderline-heroic, resulting in some of the best member engagement and event turn-out that I've ever seen. Perhaps most impressive is their work for the future, looking to balance our tradition of in-person programming with more-accessible online content. Thank you, Laura and Kyle, for your leadership, wisdom, and effort.

And to you – my friends, colleagues, mentors, (occasional) nemeses, and fellow BCBA members, thank you for continuing to show up. Thank you for your contributions to the bar, your continued participation, and your professionalism. It's a privilege to practice law in Boulder County.

If you like what we've been doing at the Bar, if you hate what we've been doing, or if you have suggestions on how we can do better, please drop me a line at [jrose@lyonsgaddis.com](mailto:jrose@lyonsgaddis.com).

## WELCOME NEW BCBA MEMBERS

Christopher J Kiyan  
Marina K Fleming  
Tracy L Brooks  
Eve-Lynn J Rapp  
Torrey M Kittle  
Merissa Osswald

Andrew P Bevacqua  
Emily R Griffin  
Molly K Owens  
Lauren Schusterman  
Lindsey Layer  
Nicholas Turiciano



# DEPARTMENT OF JUSTICE SEEKS TO SUSPEND ACTION IN COLORADO'S CLEAN WATER ACT LAWSUIT

LEILA BEHNAMPOUR

With the change of administration, the federal government is reconsidering many of the regulatory actions from the last four years. In several pending cases across the country involving regulatory actions, the Department of Justice (DOJ) has moved for an abeyance, or temporary suspension of the case, to prevent federal courts from issuing decisions while the new administration considers its next moves. In early February, DOJ moved for an abeyance in the litigation involving the State of Colorado's challenge to a rule narrowing the definition of "waters of the United States" under the Clean Water Act ("CWA") [33 U.S.C. §§ 1251 et seq.]. This is significant because it signals a message that the Biden administration may adopt a rule more consistent with previous guidance, reducing Colorado's need to address dredge and fill permitting gaps created by the Trump rule.

**Waters of the United States.** The CWA prohibits discharge of a pollutant into navigable waters [Id. § 1311, § 1362(12)]. The CWA defines navigable waters as

waters of the United States (WOTUS) but does not further define WOTUS [Id. § 1362(7)]. The U.S. Environmental Protection Agency ("EPA") and the U.S. Army Corps of Engineers ("Corps of Engineers") have defined WOTUS by regulation and guidance [See 33 C.F.R. § 328.3; [click here to view](#)]. On April 21, 2020, EPA and the Corps published a new definition of WOTUS (the Navigable Waters Protection Rule or 2020 Rule) with an effective date of June 22, 2020. Prior to the 2020 Rule, a 2008 Waters of the United States guidance was in effect. This guidance currently applies only in Colorado, while the 2020 Rule is being challenged in federal court.

**Section 404 Dredge and Fill Permits.** The 2020 Rule narrows the definition of WOTUS more than any prior rule in CWA history. Of particular importance to Colorado is how the new definition of WOTUS relates to the "Section 404 permit" process, in which the Corps of Engineers issues permits "for the discharge of dredged or fill material into the navigable waters" [33 U.S.C. §

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# CLEAN WATER ACT LAWSUIT CONTINUED

1344(a).]. For example, if a developer intends to place fill material in a wetland that falls under the definition of WOTUS, then they would need a Section 404 permit. However, under the 2020 Rule, approximately half of the waters protected under the current WOTUS rule would not be protected. This creates an environmental and water quality problem as less waters are afforded environmental protection.

**Filling State Waters Under Colorado Law.** In addition to potential for increased environmental degradation of waters, the 2020 Rule could also halt development in Colorado because Colorado state law effectively prohibits discharge of dredge and fill material [Colo. Rev. Stat. § 25-8-501(1); 25-8-503(4)]. Colorado has historically relied on the federal government for dredge and fill permitting. During May and June of 2020, prior to issuance of the stay order in late June, the Colorado Department of Public Health and Environment (CDPHE) discussed draft legislation with stakeholders that would address the waters that would no longer have protection under the 2020 Rule if the rule were to go in effect. Since the stay, CDPHE has continued its dialogue with stakeholders while it monitors the litigation.

**Status of Federal Court Litigation.** The United States District Court issued an order in Colorado's favor on June 19, 2020, which 1) granted a stay of the agency

action; 2) stayed the effective date of the 2020 Rule; and 3) ordered EPA and the Corps to continue administering Section 404 of the CWA based on the existing navigable waters rule. The Court reasoned that Colorado would suffer irreparable harm if the 2020 Rule would become effective on June 22, 2020. EPA and the Corps appealed the order to the Tenth Circuit Court of Appeals. The parties have fully briefed the issues before the Tenth Circuit and the Court held oral argument in November of 2020. In early February 2021, while the parties were awaiting a decision from the Tenth Circuit, the DOJ moved for the abeyance of the case for 60 days. The practical effect of the abeyance is to suspend all proceedings, including prohibiting the Court from issuing an order during the abeyance period. Colorado supports the abeyance motion, which is currently being briefed. A decision on the abeyance from the Tenth Circuit is expected in the coming weeks.

Leila Behnampour is the Natural Resources Section Chair for the BCBA. Leila specializes in water rights issues. She received her law degree in 2010 from Lewis and Clark Law School, in Portland, Oregon, where she also earned a Certificate in Environmental and Natural Resources Law.



**Bridge to Justice**, a 501(c)(3) nonprofit legal services organization committed to providing equal access to justice, has received a grant from the City of Boulder to advise and represent City of Boulder residents facing eviction.

The grant arose from the city's No Evictions Without Representation ballot item. This item, approved by voters in November 2020, provides legal representation to people facing eviction. The grant will enable Bridge to Justice attorneys to attend eviction return hearings in Boulder and advise tenants regarding defenses and negotiation strategies. Tenants are advised to contact Bridge to Justice prior to the eviction return hearing to allow for possible representation and negotiation.

City of Boulder residents facing eviction should call Bridge to Justice at (303) 443-1038, x104 or the City of Boulder at (303) 441-3414.

# PROFESSIONALISM ON CALL

March 1	Karl Kumli	303.447.1375
March 8	Trip DeMuth	303.447.7775
March 15	Peggy Goodbody	303.440.5736
March 22	Anton Dworak	303.776.9900
March 29	Steve Clymer	303.530.2137

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 Boulder County Free Legal Clinics have been replaced with our Virtual Legal Clinic until further notice.

## THANKS TO OUR VOLUNTEERS

The BCBA Virtual Legal Clinic remains ongoing and has served over **200** people to date. Thank you to the attorneys who serve as volunteers:

Dan Droege	Amy Stengel	Beth Kelley
Jennifer Huston	Laura Herndon	Dipak Patel
Sherri Murgallis	Maki Iatridis	Lindsey Killion
Craig Small	K.C. Cunilio	Karen Burns
Scott Hamerslough	Fern O'Brien	Susan Spaulding
Starla Doyal	George Farmer	Chris Lane
Jeff Skovron	TJ Willard	Connie Eyester
Lila Sol	David Harrison	Beth Montague
Georgiana Scott	Ann England	Kurt Hofgard

## PRO BONO REFERRALS

One case was referred in the month of January. Thank you to the following attorneys:

**Rob Gunning**  
**Jane Paddison**

## PRO SE VOLUNTEERS

Thank you to Tucker Katz, Zachary LaFramboise and Kathleen Franco for assisting at the January Pro Se Clinic.

## PRO BONO CORNER

Interested in a Pro Bono case? Please call Kellie at 303-449-2197. CLE credits available for pro bono service.





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**Long-standing Boulder County law firm seeks an associate attorney for its litigation practice.** The ideal candidate will have clerked for a trial court judge on both civil and domestic dockets, engaged in clinical practice in law school, or both. Candidates should have an interest in both civil and domestic practice. The position is ideally suited for an attorney with 1-7 years of experience looking to practice in Boulder County for the long-haul. Please submit a resume, cover letter, and writing sample to [careers@lyonsgaddis.com](mailto:careers@lyonsgaddis.com).

**General practice Boulder law firm seeking full-time associate attorney immediately.** We are seeking an attorney with 3 to 5 years of experience practicing criminal law in Colorado, either as a prosecutor, public defender, or private criminal defense attorney. Other applicants will not be considered. Applicants must be willing and able to consistently meet a monthly billable hours requirement. We offer competitive compensation commensurate with experience and ability, starting in the range of \$80,000.00 to \$100,000.00, plus a comprehensive bonus structure. We also offer a

benefits package that includes free parking, a casual work environment, health insurance, disability insurance, paid time off, and 401k with matching. To apply for this position, please send an email with a resume, references, and cover letter describing your experience and qualifications attached to [help@dolanzimmerman.com](mailto:help@dolanzimmerman.com). No telephone calls please.

**Seeking legal secretary/paralegal.** Part-time 20 hrs/wk. \$20-\$27/hr. Good typing skills a must including typing from dictation as well as ability to take instruction and work independently. Practice areas are estate planning, business (including entity formation, purchases and sales), real estate, and probate. Some experience a plus. Salary growth based on experience and ability. Contact [gail@oshlaw.com](mailto:gail@oshlaw.com) with resume.

**Boutique PI firm seeks associate.** Established, boutique personal injury law firm in Boulder seeks a full time associate attorney with a minimum of 3 years of personal injury experience to join our team. Successful candidates should have excellent written and oral communication skills, be highly organized and motivated, possess excellent analytical and research skills, and have litigation and/or trial experience. Candidates should be able to handle a personal injury matter from intake to conclusion. Excellent benefits, including health insurance and 401K offered. Competitive salary commensurate with experience. Please submit cover letter and a resume to [jttenge@tengelaw.com](mailto:jttenge@tengelaw.com).

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# Boulder<sup>COUNTY</sup> BAR ASSOCIATION

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