NEW SPACE OPENING JUNE 1

We are looking forward to welcoming everyone to your new office on 28th Street. The facility and overarching organizational growth will provide added value to all members.

Legal professionals just starting out will particularly benefit from free resources, easy access to seasoned mentors, and a supportive environment where they can build their practice.

Follow our social media pages and e-briefs for updates on the construction progress.

SAVE THE DATE

Mark your calendars for our **Open House event on Thursday, June 6 from 3 - 5:00pm**, followed by our annual meeting from 5 - 7:00pm at the Rayback Collective.

Stay tuned for updates on our new space and the Open House event at our website www.boulder-bar.org.

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CALENDAR OF EVENTS

Wednesday, May 1
PARALEGAL
Copyright, Patent & Trademark Law: The Basics
Presented by Rick Martin
12:00 PM @ Dickens Tavern, Longmont
$25 CLE, $15 New/Young Lawyer
Register Here

Tuesday, May 7
CIVIL LITIGATION
Valuable Tips for Preparing for Mediation and Succeeding Once You Get There
Presented by Steve Clymer & Doug McQuiston
12:00 PM @ Boulder County Justice Center
$25 CLE, $15 New/Young Lawyer
Register Here

Wednesday, May 8
CRIMINAL
Update on Immigration Issues for Noncitizens in The Criminal Justice System
Presented by Hans Meyer
12:00 PM @ Boulder County Justice Center
$25 CLE, $15 New/Young Lawyer
Register Here

Thursday, May 16
BANKRUPTCY
Monthly lunch and roundtable
12:00 PM @ Kathmandu Restaurant

Friday, May 17
AVAILABILITY OF LEGAL SERVICES
Monthly lunch and roundtable
12:00 PM @ Boulder County Legal Services

Tuesday, May 21
ELDER
Privity and Privacy: Recent Case Law and Developments Impacting the Attorney-Client Relationship
Presented by Keith D. Lapuyade
12:00 PM @ BCBA Offices (3269 28th Street)
$25 CLE, $15 New/Young Lawyer
Register Here

Wednesday, May 22
TAX, ESTATE PLANNING & PROBATE
Estate Planning with Directed Trusts Under the Colorado Uniform Directed Trust Act
Presented by Peter Loritz & Jeff Kadavy
12:00 PM @ BCBA Offices (3269 28th Street)
$25 CLE, $15 New/Young Lawyer
Register Here

Thursday, May 23
NATURAL RESOURCES
CDPHE Clean Water Compliance and Enforcement
Presented by Nathan Moore
12:00 PM @ BCBA Offices (3269 28th Street)
$25 CLE, $15 New/Young Lawyer
Register Here

Tuesday, May 28
LONGMONT FREE LEGAL CLINIC
5:30 PM @ Longmont Senior Center
Please email Susan Spaulding to volunteer

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PRESIDENT'S PAGE

BRAD HALL

Every year on May 1, the American Bar Association Sponsors Law Day. It is a national day set aside to celebrate the rule of law. Law Day provides an opportunity to understand how law and the legal process protect our liberty, strive to achieve justice, and contribute to the freedoms that all Americans share.

The 2019 Law Day theme—Free Speech, Free Press, Free Society—focuses on these cornerstones of representative government and calls on us to understand and protect these rights to ensure, as the U.S. Constitution proposes, “the blessings of liberty for ourselves and our posterity.”

As lawyers it is our duty to help the public understand, appreciate, and avail themselves of these rights. But as we know, these do not exist independently, and often can stand in stark contrast to one another. This is especially true as the digital age exploded upon not only society here in the United States but across the globe. The reach and power of social media platforms such as Facebook, Instagram and Twitter have invaded both our lives and increasingly our courtrooms. Admonition instructions to juries now can often forbid not only texting and email discussions, but use of google maps to view crime scenes, and discussion on multiple social platforms. I listen to the podcast Up and Vanished which just recently provided audio of the trial of one of two defendants. Listening to the trial judge list the number of digital media platforms the jurors where warned from using is almost comical.

In Packingham v. North Carolina, one of his last Supreme Court opinions, Justice Kennedy noted that “While we now may be coming to the realization that the Cyber Age is a revolution of historic proportions, we cannot appreciate yet its full dimensions and vast potential to alter how we think, express ourselves, and define who we are.” Ever increasing varieties of litigation are testing the applicability of traditional constitutional doctrines regarding free speech and free press, as well as exploring the “new” common laws of defamation, in the expanding use of social media, internet websites, e-mails, and blogs. And one thing is readily apparent: the religious, political, ethnic, and racial divides in our society are not only being transferred to, but also magnified on, the Cyber Age’s instruments. One example is the pending case of Gilmore v. Jones in the

U.S. District Court for the Western District of Virginia.

On August 12, 2017 Brennan Gilmore, a young diplomat on leave from the U.S. State Department to help work in a friend’s primary campaign for public office, was among hundreds who gather to protest various white supremacist and neo-Nazi groups participating in the “Unite the Right” rally in Charlottesville, VA. As Gilmore recorded footage of protestors, he captured James Fields Jr. driving into a crowd, killing Heather Heyer and injuring over 30 others. Gilmore posted the footage on his Twitter account and it was picked up and broadly replayed by the national media. Gilmore accepted numerous invitations to appear on mainstream news programs. Alex Jones is a radio show host who also runs several websites, including Infowars.com and hosts other web-based shows. According to Wikipedia, he describes himself as a conservative, paleoconservative and libertarian, while others describe him as right-wing and alt-right. He has been labeled by some as a prolific conspiracy theorist. Jones, as well as several other persons and entities who also operate similar websites, individually and/or collectively made false statements about Mr. Gilmore which were summarized in an amicus brief as saying that he had links to the C.I.A. and other “black ops” actors, was a “deep state shill,” that he had foreknowledge that the events in Charlottesville were going to happen, and that he had close links to George Soros, Hillary Clinton, and Barrack Obama. As a result of these statements on the airways and on the
internet, including social media sites, Gilmore was the subject of hate mail, death threats, hacking attempts, and serious harassment including the mailing of an unknown substance to his parents’ home. He was even physically confronted in public. Gilmore brought suit against Jones and several other individuals and entities that posted, published, or re-published on their websites various videos and articles about Gilmore. Gilmore brought suit for defamation and intentional infliction of mental distress.

Upon motion for dismissal, the trial court was presented with multiple Cyber Age applications to the facts:

Are the defendants immune from suit under the federal Communications Decency Act which shields users or providers of interactive computer service from being labeled as publishers or speakers of information provided by other information content providers?

What is the proper choice of laws when the defendants are not residents of Virginia and the alleged torts occur on the internet or over the airwaves?

Was Gilmore a public figure, a limited public figure, or a private person for purposes of defamation claims before, during, and after the events and the resulting actions of the defendants? Does agreeing to appear on CNN and posting on Twitter transform one into a limited public figure?

Were the defendants’ individual internet and airwave videos and publications protected as “opinion” or actionable under common law defamation doctrines? Is the Sullivan v. New York Times doctrine applicable to events on the internet?

Can a speaker/publisher be immune from liability if the statements are his “version” of the truth and even if the allegations are unverified they would be “serious stuff” if true?

In a 68 page decision, the trial court judge denied the defendants’ assertions of immunity in their motions to dismiss, and also denied dismissal of the defamation claims. However, the court dismissed Gilmore’s claims for intentional infliction of emotional distress on state law grounds. The case will now proceed and will certainly raise additional novel legal issues as the court explores the Cyber Age’s “full dimensions and vast potential to alter how we think, express ourselves, and define who we are.”

Mr. Gilmore and other previously anonymous people have found out just how swift a social media post can turn into dangerous behavior directed back at both them and their families. The methods by which one can defend oneself are limited. Whether our legal system is up to the challenge of fairly protecting the rights of all the parties remains to be seen. As an optimist at heart I believe it is up to the task.
The West’s history of environmental exploitation may make the public understandably hesitant to endorse brownfield redevelopment; however, the reuse of old sites helps to increase density, preserve green space and reduce the overall environmental footprint of a growing Front Range. The more we know the more we can help to shape redevelopment to support our communities and protect our environment for the future.

Increases in population across the Denver Metro Area and in Boulder County in the past decade have placed increased pressure on development and public lands.[i] In and around Boulder County this has included proposed development of former industrial or other heavy use areas for mixed use or residential development by private interests.[ii] Simultaneously, the area has seen a surge in the recovery and cleanup of federal properties with a focus on recreation and sustainability.[iii] As Boulder County moves into a more densely populated future, the use of public lands for recreation is likely to continue to increase.

Understanding the legal hurdles and implications of brownfield cleanup and redevelopment in this environment can make us all better lawyers and better neighbors.

**Private Brownfield Redevelopment**

Many brownfield redevelopment projects are taken on with private capital either because the return on investment significantly outweighs the cost of the clean-up, or because the clean-up is a minor part of a larger project.[iv] In some cases the clean-up may be incidental to the project and Colorado has passed legislation to encourage such activity.[v] Additionally, a site may be sufficiently complex that a community may call out the need for environmental remediation as a part of a broader redevelopment plan, such as with the sugar mill site in the City of Longmont’s Southeast Redevelopment Plan.[vi] In each case there are questions of past and present liability that developers and planners will need to confront.

First, a developer who takes on a brownfield site or a site with potential for contamination should be aware of the possible civil liabilities and potential claims available to both the developer and members of the public under section 7002 of the Resource Conservation and Recovery Act (RCRA).[vii] Section 7002 may permit a developer to recover from the parties responsible for the contamination for the cost of the clean-up so long as the suit is brought prior to the clean-up taking place.[viii] Courts have limited liability by excluding plaintiffs who seek to recover against the responsible parties after the cleanup is complete.[ix] In the determinative case, the Court ruled that once a site is cleaned up, the requirement for “imminent and substantial endangerment” is no longer met, and therefore the claim against the responsible party is no longer timely.[x]

Under planning structures like those put in place by Longmont, municipal code may be changed, updated or adjusted to allow for expedited permitting of brownfield redevelopment. Federal law has also created protections for developers under specific circumstances. The EPA provides up to two hundred thousand dollars in project specific grants for brownfield planning under the Small Business Liability Relief and Brownfields Revitalization Act.[xi] Going a step further, in 2018 as part of the Consolidated Appropriations Act, Congress passed the Brownfields Utilization, Investment, and Local Development (BUILD) Act of 2018 under Division N of the Appropriations Act.[xii] This legislation made some substantive changes to CERCLA purchaser liability by expanding the liability shield under CERCLA from only purchasers to “bona fide prospective purchasers” and by increasing the available grant funding under CERCLA for cleanup of both privately and publicly held project sites.[xiii]

**State and Federal Action**

State action on brownfield redevelopment or redress is commonly seen in parts of Colorado where responsible parties are no longer in existence or where the harm is diffuse to communities at large. In Boulder County, state managed brownfield projects are focused in the mountain towns where historic mining activities have the potential to impact significant populations.[xiv] Projects include redevelopment of mill and mine sites in Jamestown and Nederland.[xv]
BOULDER AREA BROWNFIELDS CONT.

A discussion of brownfield redevelopment and CERCLA efforts in the greater Boulder County area would be incomplete without addressing the clean-up, restoration and opening of the Federal Wildlife Refuge at the former Rocky Flats Plant site. As we approach the 30th anniversary of the EPA and FBI intervention at Rocky Flats, it is worth reflecting on one of the largest clean-up efforts in CERCLA history, which generated $18.5 million in criminal penalties and $375 million in civil liability under CERCLA.\[xvi\]

News of the Rocky Flats Plant was first made public on March 23, 1951.xvii The Plant was initially constructed and operated by Dow Chemical Company, and later by defense contractors Rockwell International followed by EG&G, Inc.xviii Environmental contamination occurred in a variety of ways over the 38 years between Plant start-up and the June 6, 1989, raid by FBI and EPA investigators that signaled the beginning of the end of plutonium pit manufacturing operations at the Plant.\[xix\] In early years, environmental standards were low and sludge containing low-level radioactive contamination was routinely sprayed on fields around the Plant to dry; later sources of radioactive and conventional industrial pollutant releases include seepage from detention ponds; leaks from 55-gallon drums stored on the 903 Pad; releases from building fires; and re-suspension of historical contamination.

On July 19, 1996, DOE, EPA, and CDPHE signed Federal Facility Agreement and Consent Order CERCLA VIII-96-21, RCRA (3008[h]) VIII-96-01, and State of Colorado Docket #96-07-19-01, collectively referred to as the Rocky Flats Cleanup Agreement (“RFCA”), which set the cleanup standards for the Superfund site. Physical cleanup to RFCA standards was completed in October 2005.xxii Management of the remediated site was transferred to the U.S. Fish and Wildlife Service, which established the Rocky Flats National Wildlife Refuge in 2007.xxiii Distribution of settlement funds to neighboring private property owners in the class action suit Cook, et al. v. Rockwell International Corp. and Dow Chemical Co., 90-cv-181-JLK (D. Colo.), who were damaged by environmental contamination originating at the Rocky Flats Plant, received their second and likely final settlement distributions on November 9, 2018.xxiv Questions of whether the Rocky Flats cleanup was adequate, and whether the site should be open to public use, continue to spark controversy.

Brownfield redevelopment efforts in Boulder County hold much promise for shaping development in a way that supports communities and protects the environment while engendering far less controversy than major cleanups like Rocky Flats.

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[1] Click here to read article
[2] Click here to read article
[3] Click here to read article
[6] Click here to read article
[8] Id.
[9] Id. At 481
[10] Id.


[xiii] Id.

[xiv] Click here to read article

[xv] Click here to read article


[xxi] Personal knowledge of author acquired during employment at Rocky Flats Plant

[xxii] Click here to read article

[xxiii] Click here to read article

[xxiv] Order Granting Plaintiffs’ and Class Counsel’s Motion for a Second Distribution of the Net Settlement Funds, Cook, et al. v. Rockwell International Corp. and Dow Chemical Co., 90-cv-181-JLK Doc. 2539 (D. Colo. Nov. 9, 2018); read more here.

[xxv] See, e.g., articles here and here

Karl F. Kumli Jr. and Patrick M. Haines are the co-chairs for the Natural Resources/Environmental section. Karl can be reached at karl.kumli@gmail.com. Patrick can be reached at pmh@bhgrlaw.com.
COURT ANNOUNCEMENTS

THANK YOU MAGISTRATE GUNNING

On behalf of the Boulder County Bar Association, we write to thank you for your hard work and dedicated service. Magistrate Gunning stepped down from the bench earlier this Spring following a six-year tenure as Boulder County’s Civil Magistrate. Prior to serving in this role, he served as a State of Colorado Administrative Law Judge, an Assistant County Attorney in the Boulder County Attorney’s Office, and in private practice.

The civil litigants who appeared before Magistrate Gunning benefited greatly from his thorough, highly-informed, and even-handed approach. He managed cases with much-appreciated consistency and predictability. Discovery disputes – often the source of frustration to attorneys and great expense to clients – were streamlined. Magistrate Gunning set prompt hearings and afforded all parties the opportunity to present their case. In even the most contested disputes, he maintained the highest levels of professionalism and decorum. Perhaps most impressive were Magistrate Gunning’s well-written rulings, including extensive legal analysis and a thorough dissection of the unique facts of each case, almost always issued within a few hours of the hearing.

It was a pleasure to appear in Magistrate Gunning’s courtroom. On behalf of the Boulder County Bar Association, we thank him for his time, service, expertise, and professionalism. We wish Magistrate Gunning all the best as he returns to private practice, and we look forward to working with his successor, Magistrate Keith Collins, who took up the reins in Division T earlier this year.

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Boulder Court Small Claims Mediation Program

VOLUNTEERS NEEDED

Volunteer mediators are needed for Small Claims Mediations.

Mediations take place Mondays and Fridays from 1-4 p.m.

Volunteers can mediate when the dates match their schedule.

40 hours of mediation basic training is required

For more information and how to apply please contact:

Donna Powell or Tania Papp at BoulderCourtSelfHelp@judicial.state.co.us
PROFESSIONALISM ON CALL

May 6    Steve Clymer    303.530.2137
May 13   Mike Rafik      303.444.9292
May 20   Gwyn Whalen     303.443.8010
May 27   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 2019 Free Legal Clinics at the Sacred Heart of Jesus Church (1318 Mapleton Avenue), 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.

Longmont: May 28, August 27, November 19
Boulder: June 20, September TBD, December TBD
Lafayette: July 16, October 15

Thank you to our April Lafayette Legal Clinic Volunteers:

Helen Towlerton
Evan Freirich
Emily Ellison
Nicole Murad
Laurel Herndon

Shana Beggan
Mike Pellow
Stephen Cook
Dan Flynn
Kathryn Keiser

PRO BONO REFERRALS

Seventeen cases were referred during the month of March. Thank you to the following attorneys:

Susan Bryant
Shirin Chahal
Christina Ebner
Jeffrey Foltz
Judson Hite
Chris Jeffers
Ronald Jung
Heather Kurland
Rick Romeo
Bruce Weiner

Thank you to the following mediators who accepted pro bono referrals in March:

Sheila Carrigan
Robert Cooper

PRO SE VOLUNTEERS

Josh Anderson
Shawn Ettingoff
Zachary LaFramboise
Michael Morphew
Joan Norman
Thom Ward

PRO BONO CORNER

Interested in a Pro Bono case? Please call Erika at 303-449-2197. CLE credits available for pro bono service.
BOULDER COUNTY BAR FOUNDATION

The Boulder County Bar Foundation will hold the annual meeting and reception at the new BCBA offices on Wednesday, May 8. The event will begin at 5:30 PM at 3269 28th Street. There will be an opportunity to see your fellow colleagues and enjoy cocktails and hors d’oeuvres. The annual meeting will be extremely short but your attendance is necessary to approve our new Trustees and those Trustees who are continuing on for another term. All current Fellows are strongly encouraged to attend.

The current members of the Board of Trustees are Judge David Archuleta, Denean Hill, Jessica Catlin, Judson Hite, Ellen Cadette, Magistrate Keith Collins, Stephanie Brennan, Ron Jung and Keith Olivia. There are currently 3 three-year terms on the Board of Trustees that must be filled. The current Board of Trustees has nominated the following slate: Maureen Eldredge – three-year term; Brad Hall – three-year term; Tucker Katz - three-year term.

Please RSVP to Kyle@boulder-bar.org by Friday, May 3 to confirm your attendance.

WELCOME NEW BCBA MEMBERS

Garth Gersten                              Charissa L Wood
Seamus W Appel                             James J Keane
Shanona Vargo                              Jennifer S Stachniak
Paige M Murray                             Philip M Bluestein
Bruce E Bagelman                           Amy K Burma
Humberto Prospero                          Daniel M Twetten
Tyler J Romero                             Alexander J Vetras
Jeni L Rogers                              Emily Foster

When we bring our findings back to our clients, we're invariably met with this question:

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DOWNTOWN BOULDER OFFICE SUITE. Suite of four offices at 2060 Broadway. Suite includes reception area, conference room, kitchen. Some parking garage permits. Please contact Fern O’Brien: 303.443.2626; fobrien@fobrienlaw.com.

THE TENGE LAW FIRM HAS TWO EXECUTIVE OFFICES AVAILABLE FOR SUBLEASE FOR $1,450 (EACH) MONTHLY IN OUR DOWNTOWN BOULDER OFFICE. This offer is all-inclusive in nature including furniture, high speed internet, phone service, copier, reception area, fully stocked kitchen, utilities and a conference room. Call (303)665-2929 to inquire further.


DOWNTOWN BOULDER OFFICE FOR RENT – Free client parking. 9th and Walnut, conference room, available underground parking, phone and internet included. Email interest to steve@collinsrafik.com.

KNIGHT NICASTRO IS HIRING FULL TIME ATTORNEYS WITH EXPERIENCE IN CIVIL LITIGATION. Preferred candidate would have experience in trials, taking depositions and arguing motions. Some travel required. Competitive compensation, CLE budget, medical, dental, company matching 401(k). Email resume to mcminn@knighntnicastro.com

FIDUCIARY SERVICES, CAROL JOHNSON, J.D. Client seeking a competent Trustee or Personal Representative to execute their estate less expensively than a law firm or bank? 303.474-4235. Carol-530@comcast.net

OPENING FOR EXPERIENCED FAMILY ATTORNEY. Cordell and Cordell, a national domestic litigation firm with over 100 offices across 36 states, is currently seeking an experienced family attorney for an immediate opening in its Boulder, CO office. The candidate must be licensed to practice law in the state of Colorado, have a minimum of 3-5 years of litigation experience with 1st chair family law experience. Firm offers a great working environment, multiple professional development tracks and significant signing bonus. This is a wonderful opportunity to be part of a large, client and employee-centered firm. To be considered for this opportunity please submit cover letter and resume to Recruiter Larry Nelson at lnelson@cordelllaw.com or apply directly on our careers page: https://cordellcordell.com/careers/current-openings/.

ASSOCIATE ATTORNEY. Lyons Gaddis is seeking an attorney to join our Real Estate and Business Transactions Group in our Longmont office. The ideal candidate will possess 5-plus years of broad transactional real estate and business experience. Lyons Gaddis is particularly interested in those candidates who have the ambition, drive and team-orientation to help grow our state-wide practice. Qualified candidates will have experience in a law firm or similar environment and excellent writing, communication and problem-solving skills. Position includes direct client interaction and a high degree of autonomy. Send resume, writing sample, references & cover letter to careers@lyonsgaddis.com

FULL TIME PARALEGAL. Lyons Gaddis is seeking a full time Paralegal for our Longmont office. Professional and collegial work environment. The candidate must possess excellent skills in each of the following: Attention to detail on documents, emails, court filings, calendaring deadlines, proofreading. Knowledge of MS Office Word, Outlook and PowerPoint and Adobe. Verbal and written communications, organizing and prioritizing time and tasks. Minimum 3 years’ experience. Background check required. Please email resume, references, and salary requirements to careers@lyonsgaddis.com

LEGAL ASSISTANT. Minimum 5 yrs related experience, Excellent attention to detail and organization, Ability and desire to handle and complete assignments, Excellent verbal and written communication skills, Dependable, Multi-tasker, Self-starter. Able to prioritize and work with diverse personalities, Great computer skills, including proficiency in Microsoft Office Suite and Adobe, LexisNexis File&Serve, Time Matters and/or Pacer experience a plus. Professional references required after the initial interview and background check. Please email resume and salary requirements to careers@lyonsgaddis.com.