

Boulder COUNTY

BAR ASSOCIATION

MAY SIDE BAR PRESENTATION

Please join us for the **Legislative Update of the 2021 Session** presented by Andy White, Director of Legislative Relations for the Colorado Bar Association. The presentation will focus on the bills that affect lawyers passed in the current session of the legislature, with a look ahead to what will or will not pass before the current session ends.

Andy White joined the Colorado Bar Association in December 2019 as Director of Legislative Relations. Andy has over 10 years of Colorado legislative and lobbying experience. Prior to joining CBA, Andy managed state government and regulatory affairs for a solar panel manufacturer and large-scale solar project developer, focusing primarily on the Southeast U.S. Andy is a graduate of the University of Denver, Sturm College of Law, where he was a Chancellor's Scholar. Andy previously practiced law at an American law firm in Tokyo Japan; he licensed in the state of Texas and the District of Columbia.

The May Side Bar will be held on Thursday, May 13 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.

[Please click here to register](#)

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CALENDAR OF EVENTS

Thursday, May 13

SIDE BAR CLE: 2021 LEGISLATIVE UPDATE

Presented by Andrew White

4:00 - 5:00 PM CLE @ BCBA Zoom Meeting Room

\$25 CLE | \$15 New/Young Lawyer | \$10 No CLE

Please click [here](#) to register

Thursday, May 20

NATURAL RESOURCES CLE

Presented by David Harrison

4:00 - 5:00 PM CLE @ BCBA Zoom Meeting Room

\$25 CLE | \$15 New/Young Lawyer | \$10 No CLE

Please click [here](#) to register

HOME STUDY CLE: 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

Please click [here](#) to register

BCBA ANNUAL MEETING

The BCBA Annual Meeting will be held virtually again this year to better accommodate our members and observe safety protocols. While we are so disappointed that we will be unable to see you all in person, it is important to keep all of our members updated during an unprecedented time.

This year, we will also hold a virtual passing of the gavel and approval of the slate of nominees for board positions. The nominees and their brief bios will be published in the June BCBA Newsletter prior to the Annual Meeting.

Please join us on Thursday, June 3 at 5 pm for this great event. Please register below.

[REGISTER HERE](#)



David
Driscoll

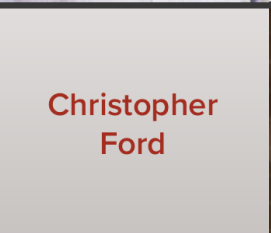


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THE AFTERMATH OF A CLIENT'S DEATH

LANE E. RIDEOUT

Few of us want, or are able, to confront the inevitability of our own mortality or that of those around us. While making plans for your personal affairs and estate after your death comes down to a personal decision, being prepared for the possible death of a client in your legal practice should not be ignored. There are a variety of resources available with respect to legal practice succession planning, including a helpful Guide from 2019 issued by the Colorado Supreme Court Office of Attorney Regulation. This Guide, as well as other resources, may be accessed via [Colorado Office of Attorney Regulation Succession Planning Materials](#).

Succession planning is focused on attorneys meeting their duty of diligence by having a plan in place in the event of their own death or incapacity. For those who do not have a plan in place or have not reviewed their plan in some years, looking at this issue is time well spent. However, succession planning is focused on the death or incapacity of the attorney rather than the client. The death of a client raises other issues worthy of attention from a prudent practitioner.

As a solo practitioner working without administrative support, I gather basic information from potential clients in a meeting or over the phone. I consider the information I need from the potential client and tailor my initial questions and the information I seek based

on the particular issue for that client. In the past I have not made it a practice to take emergency contact information from potential clients, nor usually clients. The tragic deaths in Boulder in March included one of my clients and was a stark wake-up call that I should be requesting emergency contact information, at the very least for those I convert from potentials to clients. I was lucky to know enough about this client's background to be able to obtain information for next of kin, but this was luck rather than preparation. Experience is an excellent teacher and I have learned my lesson. Having the relevant contact information is not the end of the inquiry, as there must still be an assessment regarding what, if any, information can or should be disclosed in the wake of the client death.

The Colorado Rules of Professional Conduct require attorneys to act with reasonable diligence and promptness in representing a client. (Colo. RPC 1.3) Rule 1.16 addresses declining or terminating a client relationship, but this Rule and others do not explicitly reference termination based upon the death of a client. Nevertheless, it is difficult to imagine that the client relationship is not terminated by the death of the client, and I will assume for purposes of this article that death does terminate the relationship. Of course, this does not end our obligations as attorneys; obligations to

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AFTERMATH CONTINUED

prior clients and the duties of loyalty and confidentiality continue to be relevant. Importantly, we have an obligation to protect a client's interest upon termination of a representation (Rule 1.16(d)). It may be that there is ongoing litigation or an unresolved dispute that is not rendered moot by the death. It may be that the legal issue affects the client's estate. It may be that you are holding funds in your trust account that should be returned. It may be that the amount of the attorney fees paid to you or your firm are relevant for your client's final tax return.

Formal Ethics Opinion 132 addresses the duties of confidentiality of a will drafter upon the death of the testator. For purposes of all practitioners (in addition to will drafters), the Opinion compiles the relevant guidelines with respect to confidentiality. Specifically, the duty of confidentiality continues after a client's death. This is based on Rule 1.6(b) failing to list death of a client as an exception to the confidentiality requirement and comment 20 to this Rule (the duty of confidentiality continues after the client-lawyer relationship has terminated). Rule 1.9(c)(2) also prohibits a lawyer from revealing information related to a representation except as the rules permit or require with respect to a client. See also *Wesp v. Everson*, 33 P.3d 191, 200 (Colo. 2001) (the attorney-client privilege

ordinarily survives the death of the client). The Colorado Supreme Court also held last year that there is an implied waiver of the attorney-client privilege for a decedent's former attorney to provide a personal representative with information necessary to settle the estate. *Freirich v. Rabin (In re Estate of Rabin)*, 474 P.3d 1211, 1220-1221 (Colo. 2020). However, the ethical duty to surrender certain papers to a client at the end of a representation does not pass to the personal representative. *Id.* at 1218 (relying on the Colorado Probate Code's definition of property, CRS § 15-10-201(42)). The Court in *Rabin* closely examined the broader ethical requirement of confidentiality with the narrower privilege and gave a useful rubric for practitioners faced with similar issues. First, attorneys should determine if any of the exceptions to the duty of confidentiality or privilege apply. Second, attorneys should determine if the attorney-client privilege was explicitly waived by the client in his or her will. Third, attorneys should determine if a client's actions before death impliedly waived the privilege by nominating a personal representative. Fourth, in terms of the duty of confidentiality, attorneys should assess whether there is implied authorization to disclose the confidential information to the personal representative based on reasonable grounds that the release of information will further the former client's interest in settling the estate.



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.

AFTERMATH CONTINUED

The Court was careful to hold that any implied authorization for disclosure does not extend to a complete legal file. *Id.*

Formal Ethics Opinion 116 addresses the ethical considerations in the dissolution of a law firm or a lawyer's departure from a law firm. While not precisely on point, Opinion 116 is instructive in its guidance regarding conflicts between duties owed to the client and how those can conflict with business interests of the lawyer or firm. Fundamentally, the obligations to the client are paramount. This obligation to respect the client's interests as paramount is repeated throughout the rules and cases, including Rule 1.9 governing duties owed to former clients. My interpretation of all these rules is that it is in your client's interest to request emergency contact information and to have a discussion with the client (and written consent if needed) around our obligations regarding confidentiality and privilege,

and what that means if something were to happen to the client.

With respect to my client, I am thankful that our matter was basically concluded before death and that there is peace now (and hopefully justice in the future). I hope I can bring peace to clients in the living world and confidence that their interest will be protected even after their death. I think it behooves all of us to have the hard conversations that will effectuate such a result.

Lane E. Rideout is the one of the Business Law Section Chairs for the BCBA. Lane is a solo practitioner based in Louisville focused primarily on business and employment matters for individuals and businesses. She can be reached at lane@rideoutlegal.law

LAWYERS TO HELP VICTIMS OF VIOLENCE

Safehouse Progressive Alliance for Nonviolence (SPAN) is currently recruiting attorneys for the 3rd cycle of their Lawyers For Victims Program. The Lawyers For Victims Program gives victims of family violence, domestic violence, sexual assault, and stalking direct legal representation in Permanent Protection Order hearings in Boulder and Broomfield Counties.

SPAN contracts with local attorneys to provide specific, limited services for a flat fee of \$800 per case with no cost to victims. Contract attorneys can accept cases according to their availability and will have exclusive access to litigation roundtables, trainings, and networking opportunities with other trial advocates working with victims.

To learn more about the Program and quick application process please contact Veronica Horn, SPAN's Legal Advocacy Program Director, at 720.441.3249 or via email at veronica@safehousealliance.org

WELCOME NEW BCBA MEMBERS

Galen Peterson
Samantha S Peaslee
Courtney R McVean
Sara E Bucar
David M Rich

Edwin D Hurwitz
Jacqueline K Llinas
Benjamin P Golopol
Adam A Hubbard
Jonah P Adley

PRESIDENT'S PAGE

JEFF ROSE

The word that seems to best describe this upcoming summer is 'uncertainty.' For many of us, COVID pushed a huge volume of cases to late summer and early fall. Will they actually go? Criminal jury trials are going forward in the 20th Judicial District, but there's still significant limitations on the number of juries that can be seated each week. When these restrictions ease, we'll see all of the Court's divisions switch to criminal dockets to start clearing out the backlog of cases because of constitutional speedy trial requirements. We (and our clients) are left to wonder if our settings will get bumped, if our preparation expenses will be for nothing, and how long we'll really have to wait before we know something more certain. No one really knows.

With vaccination rates at their peak, many of us also look forward to summer vacations. Air France just announced summer flights direct from DIA to Paris. We can travel to Europe, really? Is that 3"x4" piece of cardstock with "Pfizer, Batch No..." handwritten-in really going to let us travel (mine is fancy – it's stamped "Wal-Mart")? Are we really going to social distance throughout the entire airport only to walk down a three-foot-wide jetbridge with 200 of our newfound biological trading partners?

As my thoughts look inward to my cases and my summer plans, I have to remind myself that on April 20, 2021, a Minneapolis jury convicted a white police officer for the murder of George Floyd. The reality that this verdict – in 2021 – is one of the first major convictions for police violence against a person of color, is hard to comprehend fully. I think of the number of victims of police violence that we've mentioned in newsletters and



announcements this past year, compared to the number of indictments and convictions.

I'm reminded of the role we have as lawyers in our society and the difference, however small and incremental, we can make to help the moral arc of the universe bend a little bit more towards justice.

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@lyongaddis.com.

THANKS TO JUDGE ANDREW MACDONALD

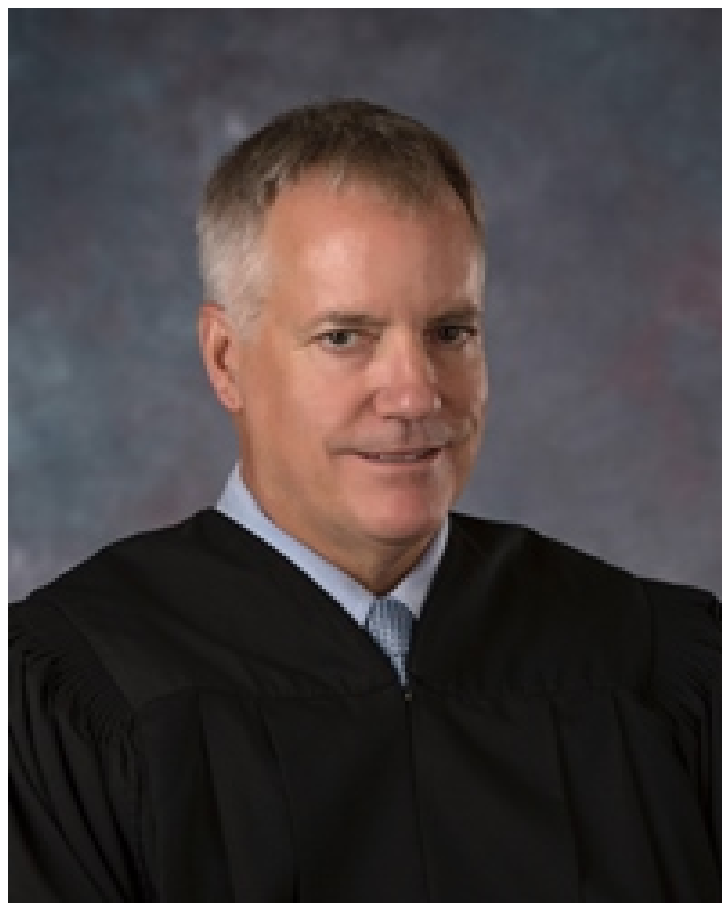
JEFF ROSE

The BCBA celebrated the retirement of Judge Andrew R. Macdonald on April 1, 2021 after ten years on the bench. During his tenure, Judge Macdonald presided over criminal, civil, domestic, and probate dockets with the highest levels of professionalism, preparation, and respect. Litigants, whether represented by the best of counsel or *pro se*, benefited from Judge Macdonald's even-handed and measured approach. Court time is a precious commodity, Judge Macdonald made sure that everyone in his courtroom was afforded full benefit of the public service he provided, with an even-handed, measured, and most important, respectful approach to all who appeared before him. Judge Macdonald let the lawyers try their case, ensured that parties' voices were heard, and rendered decisions that were anchored in the law and facts that came before him.

Prior to his time on the bench, Judge Macdonald spent his career in public service. Judge Macdonald worked at the Boulder County Attorney's Office for 21 years, representing fellow civil servants at the Boulder County Sheriff's Office, the Boulder County Coroner's Office, the Boulder County District Attorney's Office, and the Boulder County Commissioners. Judge Macdonald also served as a Public Defender in Florida prior to coming to Colorado.

Outside of his professional life, Judge Macdonald is life-long CU Buff, attending most every football and basketball game in good years and (the far too many) bad. Even in the years where the Buffs went 2-7 in Pac-12 play, even when the weather was terrible and the stands were nearly empty, Judge Macdonald could still be found presiding over the season ticket section with the fellow die-hards, supporting his *alma mater* through the end.

On a personal note, Judge Macdonald gave me my first paid opportunity in law when I was still in law



school and he was at the Boulder County Attorney's Office. Judge Macdonald helped me learn some of the most important life lessons necessary to practice law. He helped me to balance a profession that deals in human tragedy with a personal life that still can enjoy the greater good. Judge Macdonald helped me to see importance of good humor and good coffee in maintaining my own sanity while helping clients through the often-extreme challenges they face.

On behalf of the Boulder County Bar Association (and me, personally), thank you, Judge Macdonald, for your career of public service. We wish you good health, good humor, good coffee, and happiness in your retirement from the bench. Go Buffs.

THANKS TO JUDGE JUDITH LABUDA

BRETT LANDIS

On behalf of the Boulder County Bar Association, the Board of Directors wishes to thank Judge Judith LaBuda for her years of service to the bench, bar and people of Boulder County.

As attorneys, many of our Board members have had the honor of appearing in front of Judge LaBuda on a variety of cases. Judge LaBuda's orders and rulings are detailed and thoughtful. Her quality of legal analysis demonstrates the respect she has for attorneys and the seriousness of the cases come to her courtroom. Judge LaBuda's ability to appropriately weigh the legal analysis objectively served the court and our community well in even the most heart-wrenching cases.

As a strong manager of her courtroom, Judge LaBuda demonstrated how to maintain the courthouse as a place to resolve disputes with reason and analysis. She expected appropriate behavior from litigants, counsel, and all staff. When speaking with pro se litigants, she used clear and direct language to distill complicated legal issues, so that they understood a ruling. She treated all with dignity and respect, maintaining the dignity and respect for the judicial system.

As a board and bar association we were lucky to have Judge LaBuda as our ex-officio member for several years. She brought extremely helpful insights to our meetings and a great sense of comradery. Her collegiality as a board member helped to strengthen the relationships between the bench and bar as we all worked to serve the legal community together. Very recently, she served in this role at the beginning of the Covid-19 pandemic. At the beginning of the pandemic, court staff was furloughed, hearings were restricted to emergency issues only, and there was great fear and concern in the community. Judge LaBuda diligently updated the board on the court's availability and responding to community concerns regarding administration



and access. Her information to the Bar Association was vital in helping attorneys and their clients understand how to access our judicial system during the crisis and plan for necessary delays in cases. That she took the time to update the board during a time that judges were working long days without the benefit of court staff's assistance demonstrates her dedication to this role and ensuring access to justice in our community.

During her career, Judge LaBuda served many roles, both as an attorney and a member of the judiciary. A few paragraphs cannot fully encapsulate the service Judge LaBuda has provided to our community, but the board wanted to express our heartfelt thanks and recognition of Judge LaBuda's service. We wish her the best on her retirement!

PROFESSIONALISM ON CALL

May 3	Meghan Pound	303.443.8010
May 10	Tom Rodriguez	303.604.6030
May 17	Karl Kumli	303.447.1375
May 24	Trip DeMuth	303.447.7775
May 31	Peggy Goodbody	303.440.5736

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 **350** 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

Three cases were referred in February and seven cases were referred in March. Thank you to the following attorneys:

Rob Gunning
Judson Hite
Randi Grassgreen
Susan Bryant (x2)
Chris Ebner
Gary Merenstein
Jeff Skovron
Julie Kreutzer
Bruce Wiener

BCLS PRO SE CLINIC NEEDS VOLUNTEER ATTORNEYS!

Our Clinic operates once a week for 2 hours (Thursdays from 3:30-5:30), but your volunteer commitment can be just one 2-hour session each month or even every two or three months.

Every week that you sign up for, you will be scheduled with 2 callers who you will meet with via Zoom. Each caller gets one hour (or less) of your time. The day of the appointment, I will send over a Zoom link and the most recent/relevant case notes for the callers, as well as any additional supplemental or useful documents/information. The callers will have questions about their family law case, either divorce, custody, or a mix of both. Callers will have been prepped on how to access the necessary JDFs online and have been given the general gist of how to fill them out, so they will come to the Clinic for advice with any lingering or specific questions.

Additionally, we occasionally we have callers who cannot meet during regular Clinic times, we try to offer what we have been calling "Special Clinics" where we find a different time that works for the caller, and I'm always looking for attorneys with flexible schedules to help me fill those needs as well. Like the regular Clinic, the Special Clinic calls will last one hour or less. If you are open to something like this, it is a bit more sporadic and usually with shorter notice, but still very valuable to our agency.

Obviously Covid has changed the way we work, but it would be lovely to be able to find ways to work together remotely like this, so if your firm can lend a hand, please reach out to me via email by [clicking the link here](#).

- Kellie Cuevas, Pro Bono Coordinator

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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.

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.

Seeking paralegal / legal assistant. Packard and Dierking, LLC is currently seeking an experienced paralegal / legal assistant to assist attorneys in real estate and corporate transactions and estate planning. Great small law firm environment in Boulder. Competitive salary that is commensurate with duties and experience. Please click here to view the full job listing. Interested applicants should contact pdjob@hotmail.com.

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 with resume.

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BoulderCOUNTRY

BAR ASSOCIATION

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