

# **BOULDER COUNTY BAR ASSOCIATION NEWSLETTER APRIL 2016**



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# CALENDAR OF EVENTS FOR APRIL

**Friday, April 8**  
**AVAILABILITY OF LEGAL SERVICES**  
**Monthly Roundtable**  
**Noon @ Boulder County Legal Services**

**Wednesday, April 13**  
**CRIMINAL**  
**The Role of the Media in**  
**Criminal Justice**  
**Presenter: John Bear and Mitchell Byars**  
**\$25 CLE, \$15 New/Young Lawyer,**  
**brown bag lunch**  
**Noon @ Justice Center Training Room**  
**West**

**Tuesday, April 19**  
**ELDER & TAXATION, ESTATE PLANNING,**  
**AND PROBATE**  
**Conservator Created Wills**  
**Presenters: Tom Rodriguez and**  
**Brooke Brestel**  
**\$25 CLE, \$15 New/Young Lawyer,**  
**brown bag lunch**  
**Noon @ Caplan and Earnest**

**Tuesday, April 19**  
**PARALEGAL**  
**Privilege & Confidentiality for the**  
**Private Sector**  
**Presenter: Josh Marks**  
**\$25 CLE, \$15 New/Young Lawyer,**  
**brown bag lunch Noon @ Bryan Cave**

**Tuesday, April 19**  
**BUSINESS & INTELLECTUAL PROPERTY**  
**Intellectual Property Law for Commercial**  
**Lawyers: A Primer**  
**Presenter: Kirstin Jahn**  
**\$25 CLE, \$15 New/Young Lawyer,**  
**brown bag lunch**  
**Noon @ Hutchison Black and Cook**

**Wednesday, April 20**  
**FAMILY**  
**A View from the Bench**  
**Presenter: Judges Langer, MacDonald, and**  
**Mulvahill, Magistrate Haenselman, and**  
**Michelle Haynes**  
**\$25 CLE, \$15 New/Young Lawyer,**  
**brown bag lunch**  
**Noon @ Justice Center Training Rooms East**

**Thursday, April 21**  
**REAL ESTATE**  
**The Contract-Deeding Trap for the**  
**Unwary Buyer**  
**Presenter: Doug Tueller**  
**\$25 CLE, \$15 New/Young Lawyer,**  
**brown bag lunch**  
**Noon @ Hutchison Black and Cook**  
**Thursday, April 21**

**BANKRUPTCY**  
**Monthly Roundtable, Noon @ Agave**

**Tuesday, April 26**  
**ALTERNATIVE DISPUTE RESOLUTION**  
**TBD**

**Presenter: TBD**  
**\$25 CLE, \$15 New/Young Lawyer,**  
**brown bag lunch**  
**Noon @ Justice Center**  
**Training Room West**

**Wednesday, April 27**  
**LONGMONT LAWYERS LUNCH**  
**\$25 CLE and lunch**  
**Noon @ The Rib House,**  
**1920 S. Coffman Street**

**Thursday, April 28**  
**NATURAL RESOURCES/ENVIRONMENTAL**  
**TBD**

**Presenter: TBD**  
**\$25 CLE, \$15 New/Young Lawyer,**  
**brown bag lunch**  
**Noon @ Bryan Cave**

**2016 Safe Shelter Symposium on Domestic Violence**  
**On April 14 & 15 Safe Shelter of St. Vrain Valley will be**  
**sponsoring its 2016 Symposium on Domestic Violence: Navi-**  
**gating the Power of Technology in Longmont.**

Launching with a free bilingual evening endorsed by St. Vrain Valley Schools for Youth, Parents, and Educators, the event be facilitated by two dynamic presenters to examine the positive and negative features of technology. Topics will include teen dating; digital risks and vulnerabilities; relationship responsibilities, safety, how to avoid unintended harms; and how contribute to a positive online culture. The following day will begin with a Keynote by District Attorney Stan Garnett and feature concurrent sessions designed for Advocates and Service Providers; Law Officers;

Register at [www.safesheltersymposium.org](http://www.safesheltersymposium.org).  
 When: Thursday, April 14, 6:00-9:00PM; & Friday,  
 April 15th, 8:30AM-5:00PM  
 Where: Plaza Convention Center,  
 1850 Industrial Circle, Longmont, CO

**WEDNESDAY, APRIL 6**  
**Panel of Boulder County Safety**  
**Nonprofit Agency Representatives**  
**Serving Children in Families in**  
**Conflict and Crisis**

BIDC meetings will be held at the  
 Millennium Harvest House  
 1345 28th Street, Boulder, CO 80302

11:30am - 1:15pm Networking:  
 11:30am to Noon  
 Lunch and Speaker: Noon - 1:15pm

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**BIDC 2016 Annual Conference**  
**Friday, April 29, 2016**  
**Doubletree Hotel in Westminster, CO 830AM to 4PM**  
**7 regular and 2 ethics credits are applied for.**  
**Domestic Violence and its Associated**  
**Trauma-Cause and Effect on Children**  
**Kate Booth, MA and Honorable Victor Reyes (Ret.)**

Early registration is extended to April 8th, and we do give a member discount to all COAFCC, MDIC and BIDC members! Judicial personnel is complimentary, but please register early! Hope you can make it!



# AVOIDING INDEPENDENT CONTRACTOR MISCLASSIFICATION CLAIMS

By JILL ZENDER

The use of independent contractors by companies in the United States is now more widespread than ever. As this practice continues to expand, the number of audits conducted by various federal and state government agencies, including the Internal Revenue Service, the National Labor Relations Board, and the U.S. Department of Labor, has increased dramatically, as have the number of challenges being mounted in worker misclassification lawsuits. Among the more publicized of these are the recent class action worker misclassification suits filed against FedEx, Uber and Lyft. (The case against Uber is set to go to trial on June 20, 2016; the suits against FedEx and Lyft recently settled.)

At the crux of these numerous audits and lawsuits is the question of whether a worker is truly an independent contractor, or whether he or she should in fact be classified as an employee. A finding of misclassification can result in the imposition of significant fines, penalties, back taxes, back wages and attorneys' fees, all of which can have a detrimental, and potentially catastrophic, effect on a business. Yet companies attempting to determine whether their workers are properly categorized must contend with a dizzying number of classification tests, which vary between federal and state law, and among individual states. For example, the factors applied by the IRS are dif-

ferent from the factors applied by the Colorado Department of Labor and Employment in its unemployment insurance analysis, which are in turn different from those factors considered under the Colorado Wage Claim Act.

So how can businesses, and workers, protect themselves from a potentially devastating audit, and/or costly litigation? There is unfortunately no single blueprint for avoiding a misclassification finding or claim, since every business and every working arrangement is different. However, familiarity with applicable federal and state laws, and the tests applied by each, can go a long way in providing protection.

Though not exhaustive, the following is an overview of several federal and state entities that apply tests for determining whether a worker is an independent contractor or should be classified as an employee:

### Internal Revenue Service

The Internal Revenue Service looks at three areas in determining whether a worker is an independent contractor: behavioral control, financial control and the type of relationship between the parties. (These areas are discussed extensively on the IRS website, located here: <https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee>.)

<https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee>.)

The factors considered by the IRS in analyzing behavioral control include whether the business has a right to direct what work is performed, the manner in which the work is performed, and whether instructions and/or training are provided. Generally speaking, the more control exerted by a business over a worker, the less likely it is that worker will be classified as an independent contractor.

With respect to financial control, the IRS analyzes whether the facts demonstrate a business has the right to control the financial and business aspects of the worker's job, including the following:

- The extent of the worker's unreimbursed business expenses
- The extent of the worker's investment in tools and/or facilities used in performing services
- The extent to which the worker makes his or her services available to the public (in the relevant market)
- The manner in which the business pays the worker
- The extent to which the worker can realize a profit or incur a loss

Independent contractors typically have an opportunity for profit or loss, and

*(continued on the next page)*



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## MISCLASSIFICATION CLAIMS *(continued from page 3)*

provide their own tools and equipment, while employees do not. An employee's business and travel expenses are generally paid by their employers, while independent contractors usually submit expenses to a business as part of their invoices. Independent contractors are generally paid a flat fee for the job, as opposed to being paid hourly or weekly (the IRS notes there are professional exceptions to this rule, however, including lawyers who are typically paid hourly by their clients).

Finally, the IRS considers the relationship that exists between the business and the worker. Among the factors considered in this part of the analysis are:

- The existence and contents of any written contract outlining the relationship of the parties
- Whether the worker receives any type of benefits, such as vacation pay, sick pay, insurance, 401k plan participation, etc.
- The permanency of the relationship
- The extent to which the services provided by the worker are a key aspect of the company's regular business

Although the IRS will consider a written contract stating a worker is an independent contractor, it is not bound by that contractual agreement between the parties. If a worker receives benefits, that suggests he or she is an employee. (However, the lack of any such benefits does not necessarily mean a worker is an independent contractor.) In considering the permanency of the relationship, the IRS states: "If you hire a worker with the expectation that the relationship will continue indef-

initely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship."

<https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee.>

If a business is unable to determine whether a worker should be classified as an independent contractor or an employee, it can request that the IRS make that determination by filing a Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, which can be accessed here: <https://www.irs.gov/pub/irs-pdf/fss8.pdf>. (The IRS notes, however, that it can take up to 6 months to get a determination.)

### Fair Labor Standards Act

The minimum wage and overtime requirements of the federal Fair Labor Standards Act (FLSA) only apply to employees. In order to determine whether a worker is an employee within the meaning of the FLSA, the following factors are generally considered:

- The extent to which the work performed is an integral part of the employer's business
- Whether the worker's managerial skills affect his or her opportunity for profit and loss
- The relative investments in facilities and equipment by the worker and the employer
- The worker's skill and initiative
- The permanency of the worker's relationship with the employer
- The nature and degree of control by the employer

*Fact Sheet #13: Am I an Employee?: Employment Relationship Under the Fair Labor Standards Act (FLSA)* (<http://www.dol.gov/whd/regs/compliance/whdfs13.pdf>).

Many of the factors considered by the FLSA are similar to those examined under the IRS analysis. Echoing the IRS provisions, the FLSA notes that "the fact that the worker has signed an agreement stating that he or she is an independent contractor is not controlling because the reality of the working relationship – and not the label given to the relationship in an agreement – is determinative." *Id.* The FLSA also notes that the fact a worker has incorporated as a business and/or is licensed by a government agency "has little bearing on determining the existence of an employment relationship." *Id.*

### National Labor Relations Board

The National Labor Relations Board (NLRB) has adopted an 11-factor test for determining whether a worker is properly classified as an employee or an independent contractor. These factors include consideration of the following:

1. The extent of the control over the details of the work
2. Whether the service provider is engaged in a distinct occupation or business
3. Whether the work is generally done under the direction of the employer, or

*(continued on the next page)*

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## MISCLASSIFICATION CLAIMS *(continued from page 4)*

is performed by a specialist without supervision

4. The level of skill required
5. Whether the required instruments, tools and place of work are provided by the employer or the service provider
6. The length of time the worker provides the service
7. The method by which the worker is paid—i.e., by the time or by the job
8. Whether the work being performed is part of the employer's regular business
9. Whether the parties believe they are creating an independent contractor relationship
10. Whether the principal is in the business
11. Whether the evidence tends to show that the service provider is rendering services as an independent business

*See FedEx Ground Package Systems, Inc.* (361 N.L.R.B. No. 55) (2014).

### **Workers' Compensation Act of Colorado**

The Workers' Compensation Act of Colorado (WCAC) defines "employee" as "any individual who performs services for pay for another . . . unless such individual is free from control and direction in the performance of the service, both under the contract for performance of the service and in fact and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed." C.R.S. § 8-40-202(2)(a). In order to demonstrate that an independent contractor relationship exists, the person for whom the services are performed must not:

- 1) Require the individual to work exclusively for the person for whom services are performed, except for a finite, specified period;
- 2) Establish a quality standard for the individual; except that plans and specifications may be provided regarding the work (but the business cannot oversee the actual work or instruct the individual as to how the work will be performed);
- 3) Pay a salary or hourly rate instead of a fixed or contract rate;
- 4) Terminate the work during the con-

tract period unless the worker violates the contract terms or fails to meet the contract specifications;

- 5) Provide more than minimal training to the worker;
- 6) Provide tools or benefits to the worker (although materials and equipment may be supplied);
- 7) Dictate the time of performance beyond a completion schedule and negotiated/mutually agreeable work hours;
- 8) Pay the worker personally rather than in a business or trade name; and
- 9) Combine business operations in any way with the service provider.

C.R.S. § 8-40-202(2)(b)(II)(A)-(I).

As noted above, documentary evidence is relevant under the WCAC in determining whether an independent contractor relationship exists. If the parties enter into a written agreement demonstrating the nine factors listed above, and it is signed and notarized by both parties, that agreement "shall create a rebuttable presumption of an independent contractor relationship . . . where such document contains a disclosure, in type which is

larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to workers' compensation benefits and that the independent contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship." C.R.S. § 8-40-202(b)(IV).

### **Colorado Employment Security Act**

Like the WCAC, the Colorado Employment Security Act (CESA), which oversees unemployment insurance, considers nine factors in determining whether a worker is an employee or an independent contractor. See C.R.S. § 8-7-115 (c)(I)-(IX). These nine factors are nearly identical under both statutes.

As with the WCAC, a written document may create a rebuttable presumption of an independent contractor relationship between the parties, "where such document contains a disclosure, in type which is larger than the other provi-

*(continued on the next page)*

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## MISCLASSIFICATION CLAIMS *(continued from page 5)*

sions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity, and that the independent contractor is obligated to pay federal and state income tax on any moneys paid pursuant to the contract relationship." C.R.S. § 8-70-115(2).

The Colorado Department of Labor and Employment provides workers who believe they have been misclassified as independent contractors with a complaint form on the CDLE website: <https://www.colorado.gov/pacific/cdle/misclassification>. Employers who need assistance in determining how to classify workers may obtain an Advisory Opinion from the CDLE by completing

the appropriate form (also accessible on the CDLE website) and paying a \$100 fee.

### **Colorado Wage Claim Act**

The Colorado Wage Claim Act, C.R.S. § 8-4-101, *et seq.*, defines "employee" as "any person, including a migratory laborer, performing labor or services for the benefit of an employer in which the employer may command when, where, and how much labor or services shall be performed."

The statute notes, conversely, 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).

Proper classification of workers is an ongoing and complex analysis under the numerous federal and state statutory schemes. Employers who familiarize themselves with the factors considered by these various entities, and who conduct regular reviews of their working relationships, will be much better protected than those who do not in the event of a governmental audit and/or worker misclassification claim.

*Jill Zender is a solo practitioner in Boulder specializing in Employment Law. She is also the co-chair of the BCBA Employment Law Section with Patricia Bellac.*

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Consider being a leader of the Boulder  
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The Board of Directors has one  
opening for a 3-year term as a director.

There is an opening for the  
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BCBA President in 2018-2019.

If you are interested in applying for  
one of these positions or have  
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expectations, please send a

letter of interest to

Christine at the BCBA.

[christine@boulder-bar.org](mailto:christine@boulder-bar.org)

by April 29, 2016



Bridge to Justice is pleased to  
welcome Ericka J.A. Fowler to our  
organization as Senior Staff Attor  
ney. Ericka will be assisting low-  
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in family law, consumer debt and  
other civil legal matters, as well as  
assisting the Executive Director in  
the management of the agency.

## PRESIDENTS PAGE

By CRAIG SMALL



Hello fellow Boulder County Bar Association Members!

First and foremost, thank you all for the wonderful attendance at this year's Food, Wine, Jazz, Art Fundraiser! It was a wonderful evening filled with great people, food, drink and good times. I know it was a great night because there was a plethora of attorneys cutting it up on the dance floor all the way to the end of the night. Yeah, I'm talking about you Brett Landis and Jennifer Lorenz! One word for you two.....nailed-it.

Second, spring has sprung and it is time to start cleaning out your file cabinet and make room for all those juicy cases that are coming down the pipeline in 2016.

Remember general private practice attorneys, you can destroy that client file 10 years after termination of representation, upon delivery to the client when there are no pending/threatened legal proceedings or no less than thirty days after given notice to a client you intend to destroy the file provided there are not pending/threatened legal proceedings. Notice to the client can be satisfied by putting your file retention policy in your fee agreement signed by the client.

You do have a fee agreement signed by the client right?

For criminal lawyers (that is lawyers who practice criminal law, not lawyers that are criminals although I guess it

would apply to them too) you must retain your client files for the life of the client, five years from conviction or eight years from conviction depending on the conviction.

If you are so inclined a great way to clean up those files are to digitize your files and store them in the cloud although I think my son would rather make forts in the basement with all my old client file storage boxes.

This is also a good opportunity to take a look around your office and spruce things up a bit. Funky smell coming from the office fridge...clean that up! Dark corner looking a little boring...get a succulent! Clean up that clutter on your computer desktop screen! When

was the last time you got your shoes shined? Does that old suit still fit? Is it time for a new suit? Revisit that Fee Agreement.

Clean out that email inbox! As I write this President's page I see 10,220 emails floating around that inbox. There are a thousand tasks to do around the office and spring is the best time to do it.

But don't clean up too much. In the immortal words of the great Michio Kaku, "It's pointless to have a nice clean desk, because it means you're not doing anything." I am so jealous of that guy's head of hair.

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# END OF LIFE OPTIONS BILL WITHDRAWN

By AMBER REED AND LAURA MOORE

In the fall of 2014, Brittany Maynard, a young woman with a terminal brain tumor, moved to Oregon to end her life, as allowed by their Death with Dignity law.<sup>1</sup> My childhood friend Jane, suffering with the same diagnosis, did not have that option. For years she lived with growing tumors, seizures, and excruciating headaches, and eventually lost her ability to read or verbally communicate as the tumors entangled in her brain's language center. Surgery, chemotherapy, radiation, and experimental treatments, could not save her life. Once again, Coloradans have been denied the choice to make an end of life medication request.

State Senate Representatives Joann Ginal (D-Fort Collins) and Lois Court (D-Denver) introduced the latest end of life bill in January of 2016.<sup>2</sup> The

“Colorado End-of-Life Options Act,” authorized an individual with a terminal illness to request, and the individual’s attending physician to prescribe, medication to hasten the individual’s death.<sup>3</sup> The proposed legislation defined terminal illness as, “an incurable and irreversible illness that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.”<sup>4</sup> To qualify for the medication, the proposed legislation set forth specific criteria: a capable, adult resident of Colorado, with a terminal illness, who has voluntarily and verbally expressed the request for the prescription on two occasions, and submitted a written request to his or her attending physician.<sup>5</sup>

Also in January of 2016, House Representative Michael Merrifield (D-Manitou Springs) introduced an identical bill, HB16-1054. Leadership assigned HB-16-1054 to the House Judiciary Committee, and SB16-025 to State, Veterans & Military Affairs. Legislators held public hearings on the bills the week of February 1, 2016, which were well attended and included emotional testimony on both sides of the issue. On February 10, 2016, SB16-025 failed in committee and was postponed indefinitely. HB16-1054 passed through the House Judiciary Committee and moved on to the Committee of the Whole. On February 24, 2016, Representatives Ginal and Court pulled the bill off the calendar before any floor

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## END OF LIFE OPTIONS *(continued from page 8)*

debate. Arguing that the votes were not secure to pass it, the bill's sponsors elected to withdraw the legislation.

This last effort was the third attempt in Colorado for "end-of-life" legislation. In 1995, former State Representative Peggy Lamm (D-Boulder) introduced similar legislation, which failed to survive committee.<sup>6</sup> Similar legislation did not surface again until 2015. Last year, Ginal and Court introduced HB15-1135, the Death with Dignity Act, voted down in House Committee.<sup>7</sup>

Presently, five states enacted legalized physician-assisted dying: Oregon, Washington, Vermont, Montana, and California.<sup>8</sup> Interestingly, Montana did not pass legislation allowing for such. Instead, the Montana Supreme Court held that "under § 45-2-211, MCA, a terminally ill patient's consent to physician aid in dying constitutes a statutory defense to a charge of homicide against the aiding physician when no other consent exceptions apply."<sup>9</sup>

Oregon paved the way for the physician-assisted dying movement with efforts beginning in the early 1990's, when the first law allowing dying patients to control the timing of their death was introduced.<sup>10</sup> Around the same time, both California and Washington introduced

ill-fated legislation pertaining to physician-assisted dying.<sup>11</sup> Measure 16, Oregon Death with Dignity, passed by Oregon voters in 1994 made Oregon the first state to allow physician-assisted dying. Measure 16 differed from the laws proposed in California and Washington because it contained specific prohibitions against euthanasia by legal injection.<sup>12</sup> Even so, Oregon's Measure 16 faced various legal battles and resistance, including opposition by the DEA and substantial attempted interventions by members of U.S. Congress.<sup>13</sup> On October 27, 1997, physician-assisted dying officially became a legal medical option for terminally ill Oregonians. Since 2006, Oregon's Death with Dignity Act remains unchallenged, and as of 2012, eighty percent of Oregon citizens support the Act.<sup>15</sup> Colorado legislators based the latest proposed legislation on Oregon law. Opponents objected that the bill's language mirrored Oregon law, rather than Colorado.

According to Roland Halpern, Director of Community Relations for non-profit organization Compassion and Choices, sixty five percent of Coloradans favor aid-in-dying legislation. Traditionally, approximately 30% are unlikely to move on the issue due to religious or other moral/ethical based reasons.

Halpern noted the 2016 bills' titles were changed to the "End of Life Options Act," from "Death with Dignity," after the hospice community objected that the previous title suggested individuals in hospice did not die with dignity.

In 2015, the disability community expressed concern that disabled individuals would be exploited or taken advantage of by other individuals seeking this medication on their behalf. To address this concern, the proposed 2016 legislation stated, "a person does not qualify for aid-in-dying medication solely because of age or disability."<sup>16</sup> To protect against abuse, the proposed 2016 legislation imposed criminal penalties against an individual who, with the intent or effect of causing an individual's death, purposely or knowingly, alters or forges a request for the medication, or conceals or destroys the rescission of a request.<sup>17</sup>

Another concern in 2015 included potential dangers surrounding the statistic that 35% of the individuals who request the medication do not take it. The proposed 2016 legislation required a person with custody or control of the unused medication to dispose of it under medication take back programs<sup>18</sup>.

*(continued on the next page)*

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Mr. Cohen served as an Air Force JAG, a Special Asst. U.S. Attorney, a prosecutor, a Boulder Municipal Judge, on the Executive Board of the Colorado Municipal League, and on the Editorial Board of The Colorado Lawyer. He wrote six articles published in the American Jurisprudence Proof of Facts series. He taught an advanced legal writing class at the University of Arkansas School of Law. His two mysteries, published by Time Warner, won high praise, and one was a Book Sense® top ten mystery pick. His non-legal articles have appeared in magazines such as Inside Kung Fu, Camping & RV, and Modern Dad. He is a member of the Institute of General Semantics.

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## END OF LIFE OPTIONS BILL (continued from page 9)

The bill would have required the prescribing physician to counsel the individual about safe disposal of any unused medication.

Significantly, the proposed 2016 legislation required the individual seeking the medication to be an adult, “capable” of making these requests. The proposed statute defined “capable” as, “in the opinion of a terminally ill individual’s attending physician, consulting physician, psychiatrist, or licensed mental health professional, a terminally ill individual has the ability to make and communicate an informed decision to health care providers, including communication through a person familiar with the individual’s manner of communicating if that person is available.” The proposed 2016 legislation included a form for the written request,<sup>19</sup> for witness by two individuals, at least one who must not be related to the individual by blood, marriage, civil union, or adoption, an individual who at the time the request is signed is entitled, under a will or by operation of law, to any portion of the individual’s estate upon his or her death, or an owner, operator, or employee of a health care facility where the individual is received medical treatment or is a resident. The individual’s attending physician could not serve as a witness to the written request.<sup>20</sup> If the treating physician had any doubts about the individual’s capacity to make an end of life decision, the bill required the physician to refer the individual to a licensed mental health professional to make that determination.<sup>21</sup> The bill allowed the individual to rescind the request for the medication at any time, “without regard to the individual’s mental state.”<sup>22</sup> The decision to request aid-in-dying medication would not affect previously executed advanced medical directives.<sup>23</sup>

In spite of this latest defeat, Ginal and Court vow to continue the fight.<sup>24</sup> If this issue speaks to you, contact your legislators and encourage a revised bill

for next year.

1. “My right to death with dignity at 29”. CNN. Retrieved October 14, 2014; (ORS 127.800-127.995), enacted October 27, 1997.
2. Senate Bill 16-025.
3. Bill Summary, Senate Bill 16-025.
4. Proposed C.R.S. § 25-48-102 (14).
5. Bill Summary, Senate Bill 16-025.
6. **HB 95-1308** Enactment of Referred Measure on Colorado Dignity in Death Act
7. **02/06/2015 House Committee on Public Health Care & Human Services Postpone Indefinitely**
8. See ORS 127.800-127.995, RCW 70.245, 18 V.S.A. Chapter 113 § 5281 *et seq.*, *Baxter v. Montana*, 224 P.3d 1211 (Montana 2009), and CA Health & Safety Code § 443 *et seq.*
9. *Baxter v. Montana*, 224 P.3d 1211, 1222 (Montana 2009).
10. <https://www.deathwithdignity.org/oregon-death-with-dignity-act-history/>
11. *Id.*
12. *Id.* and “Oregon’s Death with Dignity Act: The First Year’s Experience”, Department of Human Resources Oregon Health Division Center for Disease Prevention and Epidemiology, February 18, 1999.
13. *Id.*
14. “Oregon’s Death with Dignity Act: The First Year’s Experience”, Department of Human Resources Oregon Health Division Center for Disease Prevention and Epidemiology, February 18, 1999.
15. <https://www.deathwithdignity.org/oregon-death-with-dignity-act-history/>
16. Proposed C.R.S. §25-48-103(2)
17. Proposed C.R.S. §25-48-118
18. Proposed C.R.S. § 25-48-119
19. Proposed C.R.S. §25-48-111
20. Proposed C.R.S. §25-48-103(2)
21. Proposed C.R.S. §25-48-108
22. Proposed C.R.S. §25-48-105
23. Proposed C.R.S. §25-48-122
24. The Denver Post, “End of Life Options bill pulled before Colorado House debate,” Joey Bunch, February 24, 2016.

**Amber Reed, Esq., LL.M. is an associate at Howard O. Bernstein, P.C. Laura Moore is a member of Warren, Carlson and Moore, LLP in Niwot/Longmont. Both are the co-chairs of the Tax, Estate Planning and Probate Section of the BCBA.**



# PRO BONO PAGE

## Pro Bono Referrals

Ten cases were referred during the month of February. Thank you to the following attorneys:

**Donald Alspaugh**  
**Howard Bernstein**  
**Susan Bryant**  
**Mark Detsky**  
**Graham Fuller**  
**Sarah McEahern**  
**Gary Merenstein**  
**Elizabeth Meyer**  
**Bruce Warren**

Thank you to the following mediators who accepted referrals in February:  
**Simon Mole**

## Pro Se Program Volunteers

**Josh Anderson**  
**Sheila Carrigan**  
**Shawn Ettingoff**  
**Tucker Katz**  
**Brett Landis**  
**Michael Morphey**  
**Craig Small**  
**Leonard Tanis**

## BCAP Volunteers

There were no requests for pro bono referrals for the Boulder County AIDS Project in February

## Pro Bono Corner

**Interested in a Pro Bono case?**  
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### PROFESSIONALISM ON-CALL LIST

April 1	Meghan Pound	303.443.8010
April 11	Karl Kumli	303.447.1375
April 18	Tom Rodriguez	303.604.6030
April 25	Trip DeMuth	303.447.7775

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.

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