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## **CALENDAR OF EVENTS FOR FEBRUARY**

Thursday, February 4 IN-HOUSE COUNSEL Anatomy of a Credit Agreement: Key Provisions for Loan Agreements and Term Sheets Presenter: Eben Clark \$25 CLE, \$15 New/Young Lawyer, lunch included! Noon @ Holland & Hart

Tuesday, February 9 EMPLOYMENT New Year's Resolution: Watch Out for Whistleblowers! Presenter: Sarah Benjes \$25 CLE, \$15 New/Young Lawyer, brown bag lunch Noon @ Caplan & Earnest

Wednesday, February 10 CRIMINAL A View from Above – The Appellate Perspective Presenter: Kathy Gillespie and Karen Taylor \$25 CLE, \$15 New/Young Lawyer, brown bag lunch Noon @ Justice Center Training Room West Friday, February 12 AVAILABILITY OF LEGAL SERVICES Monthly Roundtable Noon @ Boulder County Legal Services

Tuesday, February 16 ELDER and FAMILY The Convergence of Elder Law and Dissolution of Marriage Presenter: Lee Strickler, Peggy Goodbody, Rick Romeo and Alice Ierley \$25 CLE, \$15 New/Young Lawyer, brown bag lunch Noon @ Caplan & Earnest

Wednesday, February 17 FAMILY and SOLO/SMALL FIRM Domestic Relations Collections: Using Judgment Remedies to Collect Child Support, Maintenance and Other Monetary Awards Presenter: John Barrett \$25 CLE, \$15 New/Young Lawyer, brown bag lunch Noon @ Justice Center Jury Assembly Room Thursday, February 18 REAL ESTATE and NATURAL RE-SOURCES/ENVIRONMENTAL Water Rights for Real Estate Attorneys Presenter: Kara Godbehere \$25 CLE, \$15 New/Young Lawyer, brown bag lunch Noon @ Fagre Baker Daniels

> Thursday, February 18 BANKRUPTCY Monthly Roundtable Noon @ Agave

Tuesday, February 23 PARALEGAL Privilege & Confidentiality for the Private Sector Presenter: Timothy Reynolds \$12 lunch Noon @ Bryan Cave

Wednesday, February 24 TAX, ESTATE PLANNING AND PROBATE Lawyer's Role in End of Life Planning Presenter: Grant Marylander Noon @ Dickens Tavern Longmont



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3223 Arapahoe Ave., Suite 300, Boulder, CO 80303 303-530-2137 | www.mediatelaw.com Wednesday, February 3, 2016 Collaborative Family Law -The Direction of the Future Presenters: Terry Harringon, PC; Deb Johnson ChFC, CDFA; Elizabeth Teaubert, LCSW, Rn, MS

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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## FIRST APPEARANCE CENTER AND OTHER CHANGES COMING TO BOULDER COUNTY COURT

As previously announced, the 20th Judicial District will lose its County Court Magistrate position effective June 30, 2016. Over the last twelve months, the County Court judicial officers and Chief Judge Berkenkotter have developed a plan to reallocate the roughly 4,000 cases in which Magistrate Hansson presides each year into the five Judges' Divisions.

One significant change involves the creation of a First Appearance Center (FAC), much like the ones in other jurisdictions around the state. The FAC will be the first court setting for summonses issued in traffic and misdemeanor cases as well as bond returns. It will open on January 20 in Boulder and March 16 in Longmont. Each week, the county court judge in intake will preside in the FAC in the morning before proceeding to the jail in the afternoon. Following is a short overview of how the FAC will operate:

The judges have approved a list of charges that defendants can resolve directly with the District Attorney's Office through plea-bargaining, without a judge's involvement. These will include charges of no proof of insurance, no operator's license, drug paraphernalia, minor in possession, traffic cases where no jail is imposed, county ordinances, and parks violations. If a defendant accepts the plea offered, the defendant will complete the Rule 11 advisement and other applicable documents, proceed to obtain the sentencing document from the FAC staff, and then go to the Clerk's window to address fines and costs. The judges have approved a fine schedule that FAC staff will utilize to assess the applicable fine.

If a defendant rejects a plea offer, wants to retain private counsel or seeks representation by a public defender, the defendant will be referred to FAC staff. The case will be set for an appearance in the division eight to ten weeks later. A separate list of charges is approved of cases where defendants must see a judge, either due to the nature of the charge, the imposition of a mandatory protection order, or the potential sentence. Examples of these cases include DUI and DWAI cases, assault, harassment, and all domestic violence offenses. Defendants appearing on a failure to comply for a probation complaint will also need to be seen by a judge.

The FAC will be located in Courtroom F, Mag. Hansson's existing courtroom. Two Court Judicial Assistants (CJAs) will be situated immediately outside the courtroom each morning and will check in defendants as they come in. Cases will be categorized depending on whether defendants must see a judge or not, and defendants in each group will be prioritized in the order in which they check. The typical morning schedule will be:

7:45 Courtroom F opens

8:00 Return time stated on the summons

8:05 Rule 5 video advisement plays in English and Spanish

8:15 District attorney intern begins to plea bargain cases with defendants.

Some cases begin resolving. 9:00 Judge takes the bench

Depending on the facts of a case, the Deputy District Attorney may request that a defendant who is otherwise eligible to resolve their case remain in the courtroom to be seen by the judge. The DA's office has agreed to fully train law students and interns and ensure compliance with the Student Practice Act. A Deputy district attorney will be available to approve all dispositions and to review documents such as proof of insurance, car registration renewal and dismiss a case if applicable.

From discussions with other districts, the court expects that as many as 80% of cases will be resolved through the FAC, with the remainder being set in the divisions. The Longmont first appearance court will operate the same as the FAC in Boulder.

Attorneys may be interested to know that certain practices will remain the same:

• When an attorney enters an appearance on a case, the FAC setting will be vacated and the case will be set in the Judge's division

• If a defendant has another case in another division, the FAC case will be set to trail the case in the division if the case in the division is a pre-judgment case or if the date of offense is earlier. This is consistent with current trailing practices.

• Probation complaints, if not resolved at the FAC, will be set into the original sentencing division for subsequent proceedings.

(continued on the next page)



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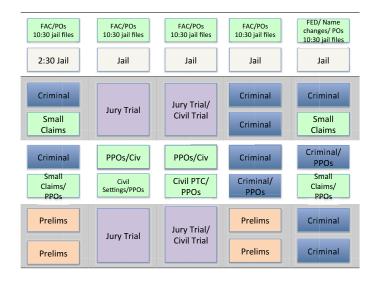
Jim Christoph, JD 303.381.2560 christophlaw@comcast.net

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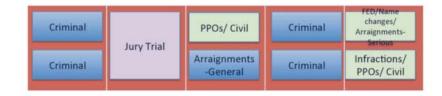
• Failures to appear will follow a 48-hour rule. If a defendant calls in advance or within two business days, the appearance may be reset once. This practice is not available if a defendant is on bond or if the case has been continued once before.

Another significant impact of the reallocation is that the County Court Judges will no longer have the considerable amount of time it takes to conduct DUI Integrated Treatment Court ("DITC") dockets. The DITC Steering Committee has developed an alternative probation program that is known as DITT that will be a sentencing option for individuals who previously met DITC criteria.

The County Court dockets and weekly rotation schedules will also change in advance of losing the County Court Magistrate FTE to allow the County Court Judge Divisions to absorb the Magistrate Division's cases. A chart reflecting the new schedules is set forth below for the four Boulder County Court Judge Divisions and for Longmont. Beginning March 2016, the appearance now called a Status Conference in misdemeanor cases will revert to being called a pre-trial conference. The change is due to confusion with status conferences in felony cases. This is only a change in name and does not indicate a return to pre-trial conferences with the DA.



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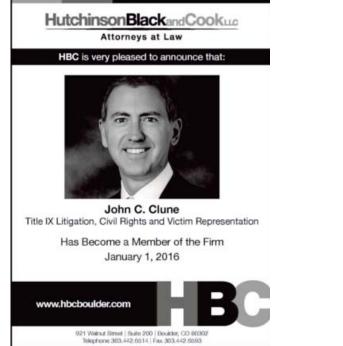




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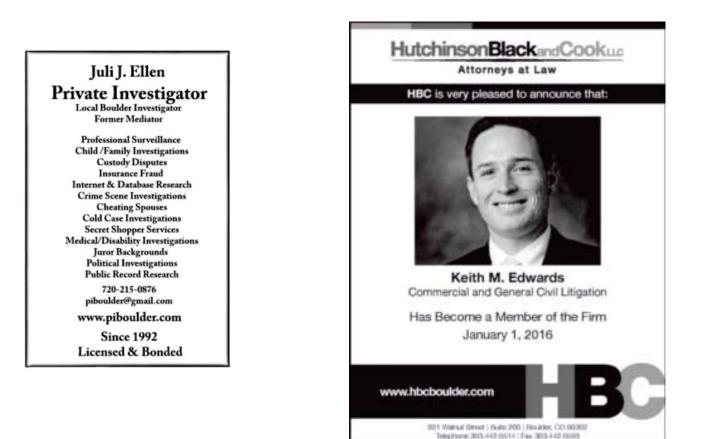


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### **PRESIDENTS PAGE**

#### By CRAIG SMALL



Hello Boulder County Bar!

As we settle into the new year and start remembering to write "2016" on our checks, we should take this opportunity to remember our loved ones on that most special of days in February...February 14th...Statehood Day in Arizona!

I don't know about the rest of you but I will be celebrating Arizona Statehood Day a few days late at the Boulder County Bar Association Food Wine Jazz Art Event on February 17th at eTown starting at 5:30 PM.

I know what some of you fellas, and maybe some ladies, are thinking...another big box, corporate, artificially manufactured holiday designed to play on our in-born guilt complex that we do not say, "I Love You!" to our loved ones enough. On any other year I would have said, "Feh! Stop kvetshing you goys, yentas and yiddisher kops. You may not give a bupkus or gornisht helfn and that takes bissel chutzpah. Be a mentsh! Your baleboste and mishpocheh deserves Arizona Statehood Day and it would be mishegas for you not to recognize this."

Well don't plotz! Shlep yourself, your tuches and your baleboste to eTown on February 17th and get schmaltzy with him or her. We will schmooze, give spiels about our legal services and get a little shmutz on our shoes as we dance to Phat Daddy, enjoy some lovely Manischewitz courtesy of The Boulder Wine Merchant and delicious craft beers from the West Flanders Brewing Company.

The nosh will be beautifully prepared for us by Front Range Catering and may or may not be kosher. I just don't know.

Let's see if we can kvetsh some shekels out of you for a good cause and try to make this a record-breaking fundraising year for Colorado Legal Services!

You are highly encouraged to bring your loved ones, clients, friends, family, acquaintances, neighbors, Arizonans, non-Arizonans and strangers to this years Food Wine Jazz Art extravaganza. \*Breaking News\* I have just been informed that I may be getting Arizona State Day confused with another holiday. Something called Valentines Day. Not familiar with it. But if that is your holiday of choice then I suppose celebrating with us at Food Wine Jazz Art on February 17th at eTown at 5:30 PM would work for that holiday as well.

See you there!

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# **PERSONAL JURISDICTION FOR FOREIGN SUPPORT ORDERS: RECENT REVISIONS TO UIFSA AND IRM LOHMAN**

Although international family support cases are not overly common, many, if not most, family law attorneys have been confronted with at least one case that has international implications. If you have not, then it is only a matter of time, as the globalization of the workforce and Boulder's growth as a hub of technology and international business guarantee that these cases will grow only more common. At first glance, the myriad statutes that comprise the Uniform Interstate Family Support Act ("UIFSA") can appear intimidating; however, recent revisions to UIFSA and recent case law from the Colorado Court of Appeals, In re Marriage of Lohman, 2015COA134 (2015) have clarified the requirements for personal jurisdiction relating to international family support cases and have con**BY: JENNIFER H. WALKER** 

firmed that the jurisdictional provisions of UIFSA parallel the requirements for personal jurisdiction under the Due Process Clause of the United States Constitution.

The purpose of this article is to provide an overview of the requirements for personal jurisdiction in international childand spousal-support cases (collectively referred to as "family support" cases), specifically by examining the recent amendments to UIFSA, which were enacted by the Colorado General Assembly effective July 1, 2015, and discussing In re Marriage of Lohman, 2015COA134 (2015), which addresses the enforcement of a foreign support order in Col-This article will begin by orado. addressing the reasons for the recent revisions to UIFSA and providing a brief summary of those revisions. Then, it will discuss the requirements for personal jurisdiction to establish, enforce, and modify a foreign support order. Finally, it will provide some practical takeaways and a short summary of the requirements for personal jurisdiction.

As discussed at length by the Prefatory Note to UIFSA incorporated into Title 14 Art. 5 of the Colorado Revised Statutes, the Uniform Law Commission, which is the non-profit association that drafts and promotes enactment of uniform state laws, amended UIFSA in 2008 so that its provisions regarding international family support disputes would be consistent with the 2007 Hague Convention on the International Recovery of

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#### **FOREIGN SUPPORT ORDERS** (continued from page 8)

Child Support and Other Forms of Family Maintenance ("Convention"), of which the United States is a signatory. In September 2014, Congress enacted Public Law 113-183, the Preventing Sex Trafficking and Strengthening Families Act, requiring all states to adopt the 2008 amendments to UIFSA by yearend 2015. In this way, the relevant provisions of the Convention are being incorporated uniformly into state law across the nation. According to the Uniform Law Commission, by December 2015, all but four states have enacted these amendments.

The greater part of the 2008 amendments are made in the new Part 7 of UIFSA, integrated in to State law by C.R.S. § 14-5-701, et. seq. The new Part 7 applies only to international family support matters involving other countries that have ratified the Convention, and it sets forth procedures for the registration, recognition, enforcement, and modification of family support orders from countries that are parties to the Convention. See generally C.R.S. § 14-5-105(c); Id. § 14-5-701, et. seq. The Uniform Law Commission provides a useful summary of Part 7 (referred to as Section 7), as follows:

Specifically, Section 7 provides that a support order from a country that has

acceded to the Convention must be registered immediately unless a tribunal in the state where the registration is sought determines that the language of the order goes against the policy of the state. Once registered, the non-registering party receives notice and is allowed the opportunity to challenge the order on certain grounds. Unless one of the grounds for denying recognition is established, the order is to be enforced.<sup>1</sup>

Part 7 also creates a strong role for the child support enforcement agency, C.R.S. § 14-5-704, while preserving the right of a petitioner to file a direct request for establishment, modification, and/or recognition and enforcement of a support order, thereby also retaining a role for private counsel, C.R.S. § 14-5-704. Parts 1 through 6 of UIFSA similarly were revised to add language to distinguish between support orders issued by another state of the United States and those issued by a foreign country; to provide consistency with the Convention where uniformity is the desired outcome; and, in certain cases, to differentiate between support orders from Convention countries and support orders of non-Convention countries.

As the scope of this article is too narrow to address all of the procedural and substantive provisions of the 2008 UIFSA amendments, the focus of the remainder of the article will be to address the foundational issue of personal jurisdiction to establish, modify, and enforce foreign family support orders in Colorado.<sup>2</sup> Consistent with UIFSA, C.R.S. § 14-5-102, "obligor" will be used to refer to the party who owes, or is alleged to owe, a duty of family support, and "obligee" will be used to refer to the party to whom a duty of support is owed or by whom a duty of support is alleged.

As would be anticipated, in order to establish an *initial* family support order involving a foreign obligor, the Colorado Court must have personal jurisdiction over the non-resident obligor. Personal jurisdiction over the obligor is both a statutory requirement under UIFSA and a Constitutional mandate, as held by the Court of Appeals in Marriage of Lohman. The statutory requirement for personal jurisdiction to establish a support order in Colorado is stated in C.R.S. § 14-5-201(a), which was not substantively revised by the 2015 UIFSA amendments, and which sets forth several bases, any one of which will provide the Colorado Court with personal jurisdiction over a non-resident, including, among others, the following: that the obligor resided

(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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#### **FOREIGN SUPPORT ORDERS** (continued from page 9)

with the child in Colorado; that the obligor resided in Colorado and provided prenatal support for the child; that the child may have been conceived in Colorado; and the catchall of "any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction."

Although Marriage of Lohman addresses the limited issue of enforcement of a foreign support order in Colorado, the expansive language of the Lohman Opinion affirms the fundamental rule that the "Due Process Clause of the United States Constitution prohibits a United States court from issuing, recognizing, or enforcing a judgment unless the court that issued the judgment had personal jurisdiction over the defendant." 2015COA134 24. The Lohman Court also notes that Section 14-5-201(a), which sets forth the statutory bases for personal jurisdiction, "parallel[s] the minimum contacts test". Id. 40.

As to the enforcement of a family support order that already has been issued by a foreign nation, Marriage of Lohman provides that, for a Colorado Court to recognize and enforce a foreign support order, the United States Constitution requires not only that the foreign court exercised jurisdiction consistent with its own laws but also that the foreign court's exercise of jurisdiction was permissible under the Due Process Clause of the United States Constitution, i.e. that there were sufficient minimum contacts between the obligor and the forum court. Id. ¶24-29, 33-35. Because it is a Constitutional mandate, this rule applies regardless of whether the foreign support order was issued by a Convention or non-Convention nation and regardless of whether the foreign support order was issued before or after the recent revisions to UIFSA. See generally id.

As *Lohman* explains, this Constitutional mandate was incorporated im-

plicitly into the statutory text of the pre-2015 version of UIFSA, C.R.S. § 14-5-607(a)(1), which provides that an obligor may contest enforcement on the basis that the issuing court lacked personal jurisdiction over the obligor, and which the Lohman Court construes as personal jurisdiction both under the law of the forum court and under the Due Process Clause. Id. ¶¶ 31, 34-35. Because C.R.S. § 14-5-607 was not substantively amended, this rule applies to the contest of the registration and enforcement of a non-Convention foreign support order and to the contest of any foreign support order if that contest was filed prior to July 1, 2015.

The new C.R.S. § 14-5-708 applies to the contest of the recognition and enforcement of a foreign support order issued by a Convention nation and explicitly provides that a court may refuse to recognize a Convention foreign support order on the basis that the issuing tribunal lacked personal jurisdiction consistent with C.R.S. § 14-5-201, which is the statutory parallel of the minimum contacts standard. See Lohman, 2015COA134 ¶ 40. Thus, Lohman directs that the exercise of jurisdiction by the foreign court must comport with both "the jurisdictional requirements of section 14-5-201 and the Due Process Clause for enforcement in Colorado." Id. ¶ 68.

The personal jurisdiction requirement also applies to the modification of a foreign support order pursuant to the revised C.R.S. § 14-5-615 and the new C.R.S. §14-5-711 (again relating only to Convention support orders), which should be read in conjunction. Section 14-5-615 provides that a Colorado Court may modify a foreign support order if the forum country lacks or refuses to exercise jurisdiction to modify its own child support order under its law, and the modification order will bind "all individuals subject to the personal jurisdiction" of the Colorado Court. C.R.S. § 14-5-615(a). As to Convention support orders only, Section 14-5-711 adds the requirement that the Colorado Court may not modify a Convention support order if the obligee remains a resident of the forum country unless the obligee submits to the jurisdiction of Colorado. In this way Section 14-5-711 does not alter, but simply adds to, the personal jurisdiction requirement established in Section 14-5-615 for Convention support orders. See Comment to C.R.S. § 14-5-711(a).

Marriage of Lohman provides one of the most important takeaways from this article: the potential to collaterally attack a foreign support order for lack of personal jurisdiction under the Due Process Clause and the consequences of losing such an attack. In Lohman, the obligor was a resident of Colorado, while the obligee and the child were residents of England. The obligee sought a divorce and the establishment of support in England and notified the obligor by serving him in Colorado. The obligor did not respond to the action in England and instead chose to attack the English support order for lack of personal jurisdiction when the obligee sought to enforce the support order in Colorado. The Court of Appeals determined that in order to enforce the English support order in Colorado the English court must have had personal jurisdiction over the obligor both under English law and under the Due Process Clause of the United States Constitution, i.e. minimum contacts, and it remanded the case back to the Colorado District Court to determine whether the English court exercised personal jurisdiction consistent with the Due Process Clause.

Lohman describes the two options available when an action to establish a support order is filed against your Colorado client in another country. The Colorado obligor has two choices: either enter an appearance and challenge jurisdiction in the foreign country; or, as in Lohman, default in the forum court

## **PRO BONO PAGE**

Pro Bono Referrals

Fourteen cases were referred during the month of December Thank you to the following attorneys: Weston Cole Daniel Flynn Chris Jeffers Gary Merenstein Curt Rautenstraus Jeff Skovron Craig Small Richard Vincent Pro Se Program Volunteers

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#### **FOREIGN SUPPORT ORDERS** (continued from page 11)

and collaterally attack the foreign support order on the basis of personal jurisdiction in the enforcement court. 2015COA134 ¶ 25. If the latter strategy is chosen, Lohman cautions that the attack is limited to jurisdiction only. Consequently, if jurisdiction is found to be adequate, the obligor may not challenge the merits of the foreign support order. Id.

This means that the obligor will be stuck with the foreign support order no matter how inequitable or discriminatory. The broad definition of "support" employed by the Lohman Court as any obligation that "has the purpose and effect of providing support for the spouse", id. ¶ 56, means that so long as the foreign court credibly identifies an award as intended for support and not as property division, the obligor who loses the collateral attack cannot object to it. In Lohman, this included the award of £423,000 to the obligee to purchase a home.

There will be no easy answer when advising your client whether or not to challenge personal jurisdiction in the foreign court, or whether to wait and later attempt a collateral attack. Under these circumstances, a wise attorney will gather as many facts as possible and try to learn about the law and legal system in the foreign country, if necessary consulting with a local practitioner in domestic law.<sup>3</sup>

In conclusion, despite the complex nature of this subject, the issue of personal jurisdiction for international family support cases can be summarized as follows. First, to establish a family support order over a resident of a foreign country, Colorado must have personal jurisdiction over the obligor under the bases set forth in C.R.S. § 14-5-201 and the Due Process Clause of the United States Constitution. Second, to enforce a support order of a foreign court in Colorado, the foreign court must have had personal jurisdiction over the defendant both under its own laws and under the jurisdictional requirements of C.R.S. § 14-5-201 and the Due Process Clause of the United States Constitution, i.e. minimum contacts. Third, to modify a foreign support order, the Colorado Court must have personal jurisdiction over the parties; the foreign court must lack or refuse to exercise jurisdiction over its own support

order; and, for a Convention support order, the obligee also must submit to Colorado jurisdiction if the obligee still resides in the forum country.

Finally, because of the myriad factual differences between cases, which makes the practice of family law so fascinating, it will be vital for the attorney who has an international family support case to take the time to carefully read and apply the UIFSA statutes. Hopefully, this article has provided a starting point for that examination.

#### **FOOTNOTES**

1. THE UNIFORM INTERSTATE FAMILY SUP-PORT ACT AMENDMENTS (2008): A Summ а r V http://www.uniformlaws.org/shared/docs /interstate%20family%20support/UIFSA% 202008%20Summary.pdf.

2. The following statutes address subject matter jurisdiction to establish a support order or modify a foreign support order: C.R.S. § 14-5-401 (to establish a support order); C.R.S. § 14-5-615 (to modify a foreign, non-Convention support order); C.R.S. § 14-5-711 (to modify a Convention support order).

3. Many thanks to Andy Littman and Craig Weinberg for generously giving their time to discuss their experience in arguing the Lohman case and the practical implications of the Opinion for the domestic attorney.

### **CLASSIFIED ADS**

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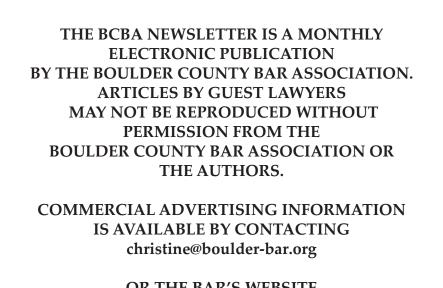
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