

Boulder County Bar Association Newsletter

RECOVERING FEES IN PROTECTIVE PROCEEDINGS

JONATHAN LEINHEARDT AND BROOKE W. BRESTEL

Calendar of Events
Page 5

In guardianship or conservatorship protective proceedings, lawyers and clients seeking compensation from the protected person's estate may or may not be entitled to such compensation. This article addresses the steps and considerations required of the court in such matters.

A **fiduciary and their lawyer**, a **lawyer hired by a respondent, ward, or protected person**, and a **third party** who performs services at the court's request, are all entitled to reasonable compensation. C.R.S. § 15-10-602(1)-(3). However, a person's entitlement to compensation or costs is always subject to a **standard of reasonableness**. C.R.S. § 15-10-602(4).

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RECOVERING FEES CONTINUED

Except as limited or otherwise restricted by a court order, compensation and costs that may be recovered may be paid directly or reimbursed **without a court order**. After a fiduciary receives **notice of proceedings for removal**, the fiduciary shall not pay compensation or attorney fees and costs from the estate without a court order. A person who receives **excessive compensation** or payment for **inappropriate costs** shall make **appropriate refunds**. C.R.S. § 15-10-602(5).

If a **fiduciary or person with priority for appointment** as personal representative, conservator, guardian, agent, custodian, or trustee **defends or prosecutes a proceeding in good faith**, whether successful or not, such person is entitled to receive from the estate reimbursement for reasonable attorney fees and costs. C.R.S. § 15-10-602(6).

A **nonfiduciary or their lawyer** are not entitled to receive compensation from an estate. C.R.S. § 15-10-602(7)(a). However, under C.R.S. § 15-10-602(7)(b), if a lawyer or another person not appointed by the court provides services that result in an **order beneficial to the estate, respondent, ward, or protected person**, the lawyer or other person not appointed may receive reasonable compensation from the estate, as

provided below:

(I) The lawyer or other person shall file a request for compensation within **thirty-five days** (*fourteen days under former version of statute*) after the entry of the order or within a greater or lesser time as the court may direct. Any objection must be filed within **twenty-one days** (*formerly fourteen days*). Any reply to the objection must be filed within **seven days** (*formerly no reply provision*).

(II) After a request for compensation or any objection to such request has been filed, the court shall determine, without a hearing, the **benefit, if any, that the estate received from the services** provided.

(III) If the court determines that a compensable benefit resulted, then the person requesting compensation shall submit to the court **only those fees or costs purportedly incurred in providing the beneficial services**. If no objection thereto is filed, the court shall determine the amount of compensation to be awarded for the benefit, without a hearing.

(IV) If an objection is filed, the proceedings to resolve the dispute shall be governed by section 15-10-604.

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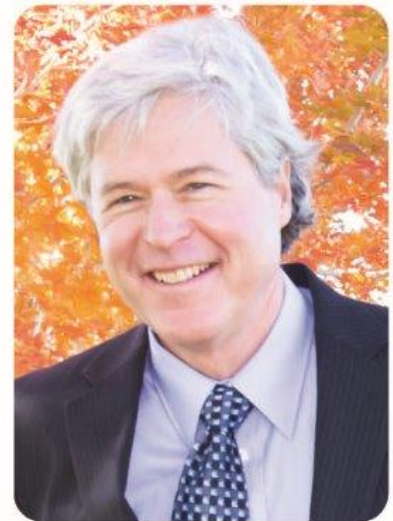


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RECOVERING FEES CONTINUED

In determining a **reasonable amount** of compensation, the court may consider the following factors under C.R.S. § 15-10-602(7)(c):

- (I) The **value** of a benefit to the estate, respondent, ward, or protected person;
- (II) The **number of parties** involved in addressing the issue;
- (III) The **efforts** made by the lawyer or person not appointed to **reduce and minimize issues**; and
- (IV) Any actions by the lawyer or person not appointed that **unnecessarily expanded issues or delayed or hindered** the efficient administration of the estate.

Services rendered by a lawyer or a person not appointed that confer a benefit to an estate, respondent, ward, or protected person are those **significant, demonstrable, and generally noncumulative services that assist the court in resolving material issues** in the administration of an estate. For example, such benefits may result in **significantly increasing or preventing a significant decrease** in the size of the estate, **preventing or exposing maladministration or a material breach of fiduciary duty, or clarifying and upholding a decedent's, settlor's, principal's, respondent's, ward's, or protected person's intent** with respect to a material issue in dispute. C.R.S. § 15-10-602(7)(d).

Under C.R.S. § 15-10-604(3), after an objection has been filed, the person requesting compensation shall have **thirty-five days**, or a greater or lesser time as the court may direct, **to make available to the objector for inspection and copying all documentation** supporting the reasonableness of the compensation and certify the date the documents were made available. The objector shall then have **fourteen days**, or a greater or lesser time as the court may direct, **to file specific**

written objections to such compensation. The court may **permit further discovery** only upon good cause shown.

Under C.R.S. § 15-10-603(3), in **considering the reasonableness of compensation** requested, the court weighs in its discretion the **following factors**:

- (1) The **time and labor required**, the **novelty and difficulty** of the questions involved, and the **skill required** to perform the service properly;
- (2) The likelihood, if apparent to the fiduciary, that the acceptance of the particular employment will **preclude the person employed from other employment**;
- (3) (a) The **compensation customarily charged in the community** for similar services with **due consideration and allowance** for the **complexity or uniqueness** of any administrative or litigated issues, the need for and local availability of **specialized knowledge or expertise**, and the need for and advisability of **retaining outside fiduciaries or lawyers** to avoid potential conflicts of interest;
- (4) The **nature and size of the estate**, the liquidity or illiquidity of the estate, and the results and benefits obtained during the administration of the estate;
- (5) Whether and to what **extent any litigation has taken place** and the results of such litigation;
- (6) The **life expectancy and needs** of the respondent, ward, protected person, devisee, beneficiary, or principal;
- (7) The **time limitations imposed** on or by the fiduciary or by the circumstances of the administration of the estate;
- (8) The **adequacy of any detailed billing statements** upon which the compensation is based;

RECOVERING FEES CONTINUED

(9) Whether the **fiduciary has charged variable rates** that reflect comparable payment standards in the community for like services;

(10) The **expertise, special skills, reputation, and ability** of the person performing the services and, in the case of a fiduciary, whether and to what extent the fiduciary has had any **prior experience in administering estates** similar to those for which compensation is sought;

(11) The **terms of a governing instrument**;

(12) The **various courses of action available to a fiduciary** or an individual seeking compensation for a particular service or alleged benefit and **whether the course of action taken was reasonable and appropriate** under the circumstances existing at the time the service was performed; and

(13) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and the **cost-effectiveness of the action taken** under the

circumstances existing at the time the service was performed.

If a governing instrument provides that a fiduciary is entitled to receive compensation pursuant to a **published fee schedule**, fees charged per the published fee schedule shall be **presumed reasonable**. The absence of such a provision in a governing instrument shall not preclude the fiduciary from receiving compensation in accordance with a published fee schedule in effect at the time the services are performed. C.R.S. § 15-10-603(4).

Whether representing a fiduciary, protected person, or interested party in protective proceedings, practitioners should be familiar with the procedures and factors entitling them to appropriate compensation. In the end it is a question of reasonableness and fairness.

Jonathan Leinhardt and Brooke Brestel are Co-Chairs of the Elder Law Section.

Presented by Colorado Criminal Defense Bar and the Office of the Alternate Defense Counsel

2017 FALL ROAD SHOW

Tues., Sept. 19th

Historic Boulderado Hotel

2115 13th St., Boulder

Members - \$60 | ADC Members - \$50 | Non-Members - \$75

3 General CLE Credits Anticipated

A review of significant 2016-2017 decisions from the Colorado State Courts, Federal Courts and the U.S. Supreme Court that will impact your clients and your practice. This CLE will address and review these decisions.

Can't attend the Boulder location?

Consider other locations nearest you...

Visit our calendar at www.ccdb.org for all locations, dates & times nearest you.

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Colorado Criminal Defense Bar | 955 Bannock St., Denver 80204 | www.ccdb.org | office@ccdb.org

~ No Prosecutors and/or Law Enforcement Permitted ~

CALENDAR OF EVENTS

Tuesday, September 5
CIVIL LITIGATION & SOLO/SMALL FIRM

The Legal Research Budget

Presenter: Patrick Flanigan

Noon @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register and pay online here](#)

Wednesday, September 6
PARALEGAL

Immigration in 2017

Presenter: Brad Hendrick

Noon @ Caplan & Earnest

[Register and pay online here](#)

Wednesday, September 13
BUSINESS

Key Legal Issues of Startups

Presenter: Jack Donenfeld

Noon @ BCBA Conference Room

[Register and pay online here](#)

Wednesday, September 13
LOUISVILLE HAPPY HOUR

1st drink and appetizers on the BCBA!

5:00 @ Waterloo

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

Friday, September 15
AVAILABILITY OF LEGAL SERVICES

Monthly Roundtable

Noon @ BCLS

Tuesday, September 19
ELDER

TBD

Presenter: TBD

Noon @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register online and pay here](#)

Wednesday, September 20
NEW/YOUNG LAWYERS

Employment Law Lunch

Noon @ BCBA Conference Room

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

Wednesday, September 20
FAMILY

Office of Attorney Regulation

Presenter: Jill Perry Fernandez

Noon @ Dickens Tavern, Longmont

\$25 CLE, \$15 New/Young Lawyer, \$13 Lunch

[Register and pay online here](#)

Wednesday, September 20
IN-HOUSE COUNSEL

D&O and Cyber Insurance

Presenters: Carrie O'Neil & Florence Levy

4:00 @ Zayo Group

\$25 CLE, \$15 New/Young Lawyer

[Register and pay online here](#)

Thursday, September 21
REAL ESTATE

Special District Conversions

Presenter: Carolyn Steffl

Noon @ BCBA Conference Room

[Register and pay online here](#)

Wednesday, September 27
TAX, ESTATE PLANNING & PROBATE
TBD

Presenter: TBD

Noon @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register and pay online here](#)

Wednesday, September 27
WOMENS BAR HAPPY HOUR
1st drink and appetizers on the BCBA!
5:00 @ License One

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

Thursday, September 28
NATURAL RESOURCES/ENVIRONMENTAL
TBD

Presenter: TBD

Noon @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register and pay online here](#)

BOULDER IDC – WEDNESDAY, OCTOBER 4

Gray Divorce: Client Competency Issues, Practical and Ethical Considerations

Presenters: David Littman, JD, Kim Walloughby, JD - Denver Attorneys

11:30 @ Millenium Harvest House, \$27 IDC Members, \$32 Non-Members, \$35 Walk in

2 General CLE and .5 Ethics To RSVP, go to boulderidc.org

PRESIDENT'S PAGE

RENEE EZER

As one of its fundamental purposes, the Boulder County Bar Association encourages and supports professionalism among its members. It provides mentors to new attorneys, and to attorneys who want guidance in their professional growth and development. It provides substantive and ethics instruction in CLEs and resources on its website. It encourages community involvement and the provision of legal services to clients with no, or low, resources to pay for them. It sponsors events at which attorneys can meet one another, and the judges and magistrates before whom many of us appear from time to time. It provides long- and short-term leadership opportunities so that attorneys of all abilities and availabilities can participate in shaping and strengthening our legal community. It promotes respect, civility, proficiency, and responsibility among all of us, through all of these services. Despite all of this, disputes occasionally arise outside of the courtroom. The Bar promotes the resolution of these disputes through its Professionalism Committee. This committee, which is comprised of 13 local attorneys and two local judges, is available to attempt to informally resolve professionalism complaints from members of the public, fellow attorneys and judges that relate to attorneys practicing in Boulder County. The Professionalism Committee adopted the [BCBA Principles of Professionalism](#), which are guidelines for conduct in our professional relationships with clients, parties, attorneys, the court and the public.

Imagine this scenario: A few weeks ago, a colleague sent me an email. We're on opposite sides of a case in which our clients do not share warm feelings for one another. The email randomly took a shot at my professionalism. Perhaps for its author, this was a maneuver done



to impress his client, who wanted to gain an imagined advantage or otherwise to deliver a blow to my client who I represent, both figuratively and literally in this litigation. However, it was directed to me, and copied several people on it who were not germane to the subject of the email. I was not happy.

When I received this denigrating email, I considered my options carefully. It would have been so easy in our impersonal electronic culture, to respond with indignation, or to meet aggression with aggression. I have seen such responses justified by others as part of their zealous representation of their client. However, such a response would not have served my client or furthered an economic resolution of his case. So I opted for the maverick strategy of picking up the phone and talking with my colleague about the email (thinking that the Professionalism Committee would be my next option if this didn't work). When I identified my concern, and honestly, my offense, at the statements he had made, my colleague became apologetic and contrite, and offered additional information about some challenges he's recently been facing.

PRESIDENT'S PAGE CONTINUED

Without the armor of litigation between us, the conversation easily turned to generating feasible and realistic settlement options for our clients to consider. I don't know what the outcome of this case will be, but I feel confident, moving forward, that my colleague will be more mindful in balancing his responsibilities to zealously represent his client with his service as an officer of the court, and as a member of a bar association that promotes professionalism among its members. This balance is what creates trust and respect with fellow lawyers and judges, that is the foundation of the collegiality in our Bar.

If you need help with a dispute concerning another attorney practicing in Boulder County, please refer to the monthly newsletter or the Bar website for the [on-call Professionalism Committee member](#). Or pick up the phone. You never know what good can come from reaching out to someone directly to solve a problem.

Renee Ezer is a shareholder at Dietze and Davis, P.C. She can be reached at 303-447-1375 or ezer@dietzedavis.com.

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Sheryl K. Bridges



Coulter M. Bump



Richard E. Bump



Alyssa C. Burghardt



Kristin C. Edgar



Elizabeth Francis



Elizabeth R. Friel



Christian Griffin



Brad J. Hendrick



Madoche Jean



Gregory S. Lindquist



Meghan E. Pound



Bob Rowland



Michael W. Schreiner



Linda L. Siderius



Kristofer M. Simms



Gregory J. Smith



Douglas Stevens



Stuart Stuller



Jennifer A. Sullivan



Matthew Ullrich

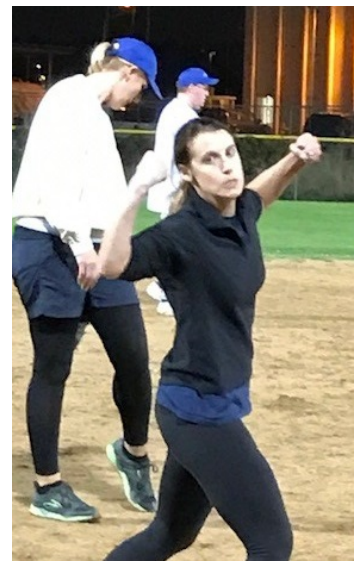


Gwyneth Whalen

Business Law | Education | Estate Planning | Health Care | Immigration | Litigation

2017 BCBA SOFTBALL TEAM

The Boulder County Bar Association softball team, Scared Hitless, completed its second season with much enthusiasm. The team got off to a slow start, losing its first 9 games, but finished the season strong on a three-game win streak. We had attorneys, staff, family members, and even help from the bench and its staff. We had a lot of fun and encourage anyone who can pick up a bat, ball, or glove, not all at the same time, to join us as we hopefully reunite next season. Thanks to all for a fun season!



THE BCBA CONFERENCE ROOM



AVAILABLE TO BOOK

Please contact Kyle at the bar offices to reserve your space. Rates are \$25 per hour. 303-440-4758

BOULDER COUNTY BAR FOUNDATION

2018 GRANT CYCLE IS BEGINNING

The Boulder County Bar Foundation grant cycle is beginning and will be accepting applications. The Foundation funds legally related organizations and programs in Boulder County. The grant application is on the BCBA website and can be accessed here. All applications are due September 15. If you have any questions, please email christine@boulder-bar.org.

2017 GRANTS

BCLS
Boulder League of Women Voters
SPAN
J-SUP Law Center
Niwot High Mock Trial Program
Boulder High Mock Trial Program
Bridge to Justice
Immigrant Legal Center of Boulder County
Safe Shelter of St. Vrain
Children First of the Rockies
Voices for Children
YWCA
TOTAL \$21,000

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VOLUNTEERS NEEDED

Volunteers needed for Senior Law Day

Senior Law Day has become the largest entirely volunteer run - and most exciting and informative - law event for seniors in Boulder County. As part of Senior Law Day, we will have two two-hour sessions of Ask-A-Lawyer, a clinic at which attendees can have a 15 minute individual conversation with an attorney. Ask-A-Lawyer has been a popular program at past Senior Law Days. Please consider volunteering this year at one of the two Ask-A-Lawyer sections.

This kind of service to our community is of great benefit to many who have little access to legal information otherwise, and can also be a lot of fun. Additionally, with this Senior Law Day, we are offering Ask-A-Lawyer services in Spanish, and will have Spanish-language interpreters on hand.

For further information, the Senior Law Day website is www.bouldercountyseniorlawday.org.

Volunteers needed in ALL fields for the Ask a Lawyer portion of Senior Law Day:

DATE: Saturday, September 23
TIME: 2 time slots – 9 till 11 and 11 till 1
PLACE: Plaza Conference Center
1850 Industrial Circle (off Ken Pratt)
Longmont
CONTACT: Susan Spaulding, susan.spaulding@longmontcolorado.gov or 303.774.4384

BCBA Family Lawyers: The Self-Represented Litigant Coordinators (SRLCs), Donna Powell and Tania Papp, are looking for additional DR attorneys for the Boulder Court Family Law Ask-an-Attorney program. This program is held in conjunction with the Divorce and Custody Orientation and Divorce and Custody Forms Workshop that take place at the Boulder courthouse every Thursday afternoon. The volunteer attorney is expected to serve for 2 hours at the courthouse from 2-4 PM (4-30 minute appointments) providing legal advice in domestic relations cases, both pre- and post-decree. These prospective litigants do not need to qualify for the indigency guidelines. They are only required to be a pro se litigant. Donna and Tania assist with the scheduling of appointments, preparing the necessary documents and assisting attorneys as needed.

Since January 2017, our volunteers have been able to provide legal assistance to 122 people.

We hope that you will volunteer for this important program that is just another effort to meet the expanding domestic relations needs in this county.

Please email your name and contact information to the Boulder Court Resource Center – BoulderCourtSelfHelp@judicial.state.co.us (email & phone number). Donna and Tania will be circulating a signup poll for you to choose the date(s) that work best with your schedule.

PROFESSIONALISM ON CALL

September 4	Mike Rafik	303.444.9292
September 11	Gwyn Whalen	303.443.8010
September 18	Lee Strickler	303.443.6690
September 25	Mark Langston	303.440.9684

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 2017 Free Legal Clinics at the Sacred Heart of Jesus church (2312 14th Street) 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 susan.spaulding@longmontcolorado.gov if you can help in Longmont.

Boulder: September 14, December 14, March 22, June 21
Longmont: August 22 and November 28



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PRO BONO REFERRALS

Six cases were referred during the months of May and June. Thank you to the following attorneys:

Norm Aaronson CULADP

Brooke Brestel

Erin Eastvedt

Bruce Wiener

PRO SE VOLUNTEERS

Josh Anderson

Evan Branigan

Kathleen Franco

Ainagul Holland

Michael Morpew

Craig Small

BCAP VOLUNTEERS

There were no requests for referrals for the Boulder County AIDS Project in July.

PRO BONO CORNER

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

LAWYER ANNOUNCEMENTS

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Congratulates

Kimberly M. Hult
Medical Malpractice Law-Plaintiffs

Baine Kerr
Medical Malpractice Law-Plaintiffs

Christopher W. Ford
Personal Injury Litigation-Plaintiffs

Glen F. Gordon
Personal Injury Litigation-Plaintiffs

Robert A. Schuetze
Personal Injury Litigation-Plaintiffs
and Railroad Law

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announces that

TIMOTHY O'NEILL

has joined the firm as Special Counsel.
Mr. O'Neill's practice will emphasize

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Ethics and Professionalism**

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COURT ANNOUNCEMENTS

NOTICE:

Due to scheduling Boulder County Courts will not be scheduling FED and Name Change hearings at the Boulder and Longmont locations on the dates listed below:

Boulder: November 10, 2017, November 24, 2017, December 22, 2017, and January 5, 2018, January 12, 2018

Longmont: October 20, 2017, November 10, 2017, November 24, 2017, December 22, 2017, January 5, 2018 , and January 12, 2018



Please join us for a

Retirement Celebration

in honor of

Chief Judge Maria E. Berkenkotter



Friday, October 27, 2017
4:00 – 5:00 p.m.
Boulder County Justice Center
1777 6th St. Boulder, CO 80302
Jury Assembly Room

CLASSIFIED ADS

TSCERTIFIED SIGNING AGENT/MOBILE NOTARY AND CONTRACT PARALEGAL SERVICES. Litigation specialist, Civil Litigation. ADC/CJA. Roz Lynn Dorf, M.A. 303.494.6935

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DOWNTOWN BOULDER OFFICE SPACE. Our building located one block NE of the Pearl Street Mall has two single-office executive suites available. Reception services, conference room access, parking, standard janitorial services are included. Internet access, telephone service, state-of-the-art printing, scanning, copying equipment are available. Visit our website at <http://1526spruce.com>. Contact David Beal at 303-928-2345 or sprucepartners@1526spruce.com.

CORNER OFFICE IN BOULDER SUITE FOR RENT. \$900/ month. This bright 130 square foot office is located in a top floor suite at 28th and Arapahoe Avenue, with conference room and amenities. Please visit <http://boulder.craigslist.org/off/6185527148.html> for details and pictures. Contact Brandon at 303-449-5602 or brandon@elderlawboulder.com.

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ASSOCIATE ATTORNEY FOR LYONS GADDIS WATER LAW GROUP. 1-5 years Colorado WL experience. Strong research and writing, attention to detail and organization. Effective verbal/written communication. Licensed to practice in Colorado. By 9/29/17, email kkelley@lyonsgaddis.com resume, references, writing sample, cover letter.



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