

# Boulder COUNTY

## BAR ASSOCIATION

## NOVEMBER SIDE BAR

Please join us for the Side Bar presentation **Getting Your Firm's Affairs in Order – Succession Planning for Law Firms**, presented by Jodi Martin.

Planning for incapacity or death is not just important for our clients, it is also important for attorneys and critical for solo and small firm practices. What happens if an attorney is unable to work temporarily or long-term? What happens if an attorney suddenly dies? This presentation will discuss some of the outcomes if a solo or small firm attorney has not planned for sudden incapacity or death. We will also discuss the process for creating a succession plan. There will be significant discussion around options for solo and small firm practices, as well as some discussion about considerations for larger firm practices.

This presentation will be held in person at the BCBA Office from 4:00 - 5:00 pm, followed by a networking and social hour with appetizers, wine and beer included. This presentation will be capped at 22 in-person attendees. The BCBA has also been approved for the City of Boulder Vaccine Verification Program. This means that all who attend our programs need to be vaccinated, and we are required to verify status. Please bring your vaccination card, a picture, or your MyColorado app when you visit our office. You will only need to do this once and we will record your name on our list of verified members. This will enable us to continue in person gatherings as safely as possible. A Home Study CLE version of this presentation will be available for those who can not attend in person.

[Please click here to register](#)

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# CALENDAR OF EVENTS

**Wednesday, November 3**

**Bagels with the Bar - Family Law**

8:00 - 10:00 AM @ BCBA Office (3269 28th St.)

Free for BCBA Members

**Wednesday, November 3**

**Criminal Law: On Felony DUI and DUID**

**Presented by Abraham Hutt**

12:00 - 1:00 PM CLE @ BCBA Office (3269 28th St.)

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

[Please click here to register](#)

**Monday, November 8**

**Civil Litigation: Claiming The Visual High Ground**

**Presented by Stephen Padwe**

4:30 - 6:00 PM CLE & Happy Hour @ BCBA Office (3269 28th St.)

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

[Please click here to register](#)

**Wednesday, November 10**

**Bagels with the Bar - Business Law**

8:00 - 10:00 AM @ BCBA Office (3269 28th St.)

Free for BCBA Members

**Thursday, November 11**

**Side Bar CLE: Getting Your Firm's Affairs in Order - Succession Planning for Law Firms**

**Presented by Jodi Martin**

4:00 - 6:00 PM CLE @ BCBA Office (3269 28th St.)

\$35 CLE & Happy Hour | \$20 New/Young Lawyer |

\$10 No CLE

[Please click here to register](#)

**Wednesday, November 17**

**Bagels with the Bar - Civil Litigation**

8:00 - 10:00 AM @ BCBA Office (3269 28th St.)

Free for BCBA Members

**Wednesday, December 1**

**Bagels with the Bar - ADR**

8:00 - 10:00 AM @ BCBA Office (3269 28th St.)

Free for BCBA Members

**Wednesday, December 8**

**Bagels with the Bar - Tax & Estate**

8:00 - 10:00 AM @ BCBA Office (3269 28th St.)

Free for BCBA Members

**Thursday, December 9**

**BCBA Holiday Party & Virtual Musical Bingo**

5:00 - 7:00 PM @ BCBA Office

\$25 Contribution

[Please click here to register](#)



**David  
Driscoll**

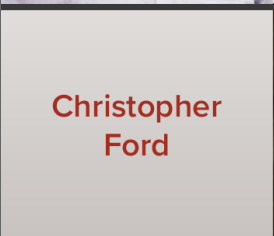


**Kimberly  
Hult**

**HutchinsonBlackandCookLLC**

Attorneys at Law

921 Walnut, Suite 200  
Boulder, Colorado



**Christopher  
Ford**



**Glen  
Gordon**



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**CALL OUR OFFICE AT 303-442-6514 TO TELL US MORE ABOUT YOUR SITUATION**

# BOULDER BAR FOUNDATION 2021 GRANTS

Did you know the Boulder County Bar Association supports our own charitable Foundation?

The Boulder County Bar Foundation is dedicated to raising funds for legally-related organizations and projects in Boulder County. Our grant awardees are proven local partners that champion social justice, help train the next generation of attorneys, and support expanded legal access and knowledge in our community.

We are passionate about giving back to the place we call home. Through the Foundation, our members harness our collective resources to make a positive impact not only on the legal community, but also on individual lives and Boulder County as a whole.

With the end of the year approaching, charitable giving season is here. We ask you to consider a donation to the Boulder County Bar Foundation as part of your 2021 giving.

How does your gift to the Foundation make a difference?

The Boulder County Bar Foundation is committed to core values of community, stewardship, generosity and adaptability. Our mission is to advance justice in Boulder County, increase understanding of the law and the judicial system, provide access to legal services for the poor, homeless, and immigrant populations, and assist those turning to the legal system for help.

Your gift to the Foundation goes directly toward free legal services, targeted volunteerism, and philanthropy for trusted nonprofits who execute on our mission.

To learn more about the Boulder County Bar Foundation or to make your gift today, please visit [boulderbarfoundation.org](http://boulderbarfoundation.org). Thank you in advance for your support!

**This year, the Boulder County Bar Foundation is pleased to award \$40,000 to the following 2021 grant recipients:**

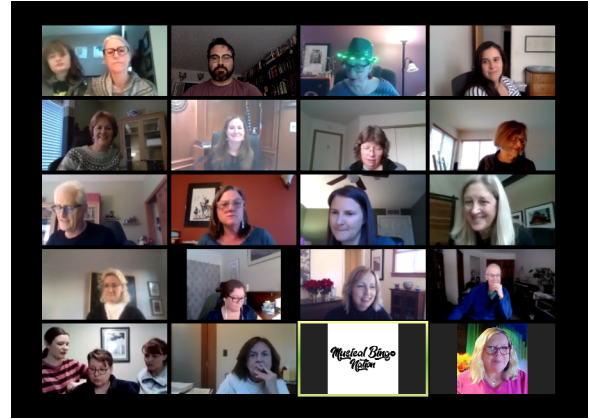
- Boulder County Legal Services
- Boulder County High School Mock Trials
- Boulder County Senior Law Day
- Boulder Voices for Children
- Bridge to Justice
- El Comite de Longmont
- Immigrant Legal Center of Boulder County
- J-SUP Boulder Law Center for the Unhoused
- League of Women Voters of Boulder County
- Rocky Mountain Legal Center
- Safe Shelter of St. Vrain Valley
- YWCA of Boulder County



**BOULDER COUNTY BAR**  
**FOUNDATION**



# HOLIDAY PARTY & FOUNDATION FUNDRAISER



Please join us for the BCBA Holiday Party on Thursday, December 9 from 5-7 pm at our offices. This will be in person for vaccinated members with a virtual opportunity from 5:30 - 6:30 if you prefer to stay at home. **In person attendance is limited to 30 people, so register quickly!**

Drinks and hors d'oeuvres will be provided at the event with a pick up option from Cured for those who participate virtually.

We will be playing Virtual Musical Bingo from 5:30 to 6:30 for all in person and those participating via Zoom. This is a fun event with great prizes to help get you reacquainted with some fantastic music from the 60's, 70's and 80's.

Each player gets a bingo card with the numbers replaced by song titles and artist names. Our host, DJ Kyle, plays the music and players rush to identify it on their cards. The first player to complete a straight line gets bingo. We will then play for double bingo and blackout. Gift cards will be awarded for each level.

**Thursday, December 9**

**5:00 - 7:00 pm in person, 5:30 - 6:30 pm via Zoom**

**\$25 Contribution to benefit Boulder County Bar Foundation**

**[Click here to register](#)**





# PRESIDENT'S PAGE

## BRETT LANDIS

Last month, I focused this column on Pro Bono Month, but I would be neglecting an important issue that is near and dear to my heart and my work if I failed to write about Domestic Violence Awareness Month. So, I am using November's column to discuss this very important issue.

Domestic violence is responsible for the most difficult and traumatic family transitions. The personal toll this takes on survivors and children is immeasurable. What is measurable is the increase in domestic violence rates since the beginning of the Covid 19 pandemic. According to the Council on Criminal Justice's National Commission on Covid-19 and Criminal Justice's study, they estimate somewhere between an 8.1% and 9.7% increase in incidents of domestic violence. *The American Journal on Emergency Medicine* reported higher increases in the emergency rooms of certain cities ranging from 10-22%. UC Davis published a study where 10% of respondents were currently experiencing intimate partner violence and reported significant increases in family stress. This societal problem is seeing a steady increase, and our community is no exception.

I have the privilege and honor to work with Safehouse Progressive Alliance for Nonviolence (SPAN) and Safe Shelter of the St. Vrain as a community partner in my role as Managing Attorney for Boulder County Legal Services. During the pandemic, we established periodic informal meetings between our organizations' legal advocates to discuss the similar problems our clients were all facing. All of our offices saw an



increase in frequency and severity of domestic violence over the past year and a half. These meetings led to outreach information being distributed through social media, increased collaboration and support between agencies, and creative problem solving. I am so honored to be a part of a community that responded to difficult times with action and collaboration to support survivors. If there is any silver lining to the pandemic and the harm it did to our most vulnerable communities, it is that we have seen the strength of our local agencies to respond in meaningful ways to the crisis.

I am reminded of a moment in my second year of law school. Sarah Buel was a guest speaker and what she said changed my life. (Prof. Buel founded some of the first legal clinics for domestic violence survivors at law schools and continues to educate law students and lawyers on this topic.) After

# PRESIDENT'S PAGE CONTINUED

pointing out the seriousness, harm, and prevalence of domestic violence in our society, she pointed out that as future lawyers, we were part of the solution. Legal representation and advice made an enormous difference in a person's ability to leave an abusive relationship. From that day on, I knew that I wanted to be a part of that solution, and I pursued a career in legal services, focused on working with survivors of domestic violence.

My best cases as a legal services attorney are the ones where I see a transformation in my survivor clients. It is truly awe inspiring to watch a person gain confidence and pride in themselves as they move forward from an abusive relationship, to see them become who they truly are. This work is rewarding on so many levels, but that experience of working with a person coming into themselves is the best reward. I am so lucky to see this and to work with the advocates at SPAN and Safe Shelter of the St. Vrain and our pro bono and contract attorneys who do this work with me.

Domestic Violence Awareness Month was in October, but the needs of SPAN and Safe Shelter of the St. Vrain remain high throughout the year. Please think about ways to support these organizations as we celebrate the upcoming holidays. You can find ways to support both organizations through their websites (linked above).

The BCBA is participating in the  
2021 Precious Gift Toy Drive!

Please email Kyle if you would like to participate.



## PRECIOUS GIFT TOY DRIVE



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We are pleased to announce that Bridge to Justice can advise and represent older residents of Boulder County (60 or older) with a variety of meritorious civil legal matters at no charge. This includes pre- and post-decree family law cases, civil protection orders, eviction defense, and public benefits including Medicaid, Medicare, Old Age Pension, and SNAP (food stamps). Services include advice, document review, drafting assistance, and representation at administrative hearings, mediation and court appearances and appeals. Further information and online application forms are available at [www.bridge2justice.org](http://www.bridge2justice.org) or by phone at 303.443.1038 x104.

This work is funded by the Boulder County Area Agency on Aging and is subject to their requirements and funding.

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# BEST INTERESTS, GUARDIAN AD LITEM & PROTECTING THE BEST INTERESTS OF CLIENTS: EXPERIENCING IMPAIRMENT IN DOMESTIC RELATIONS

HELEN TOWLERTON AND BRITTANY A. FRISBIE

In 1964, U.S. Supreme Court Justice Potter Stewart tried to explain "hard-core" pornography, or what is obscene, by saying, "I shall not today attempt further to define the kinds of material I understand to be embraced... [b]ut I know it when I see it..."

This article is not about pornography, but now that we have your attention, let us consider a similarly difficult circumstance which defies easy description: the client who is "unable to act in his or her own interests" (C.R.P.C. Rule 1.14.).

DR practitioners are often required to consider (and articulate to the court) the best interests of minor children (C.R.S. §14-10-124). Best Interests of Child provides significant guidance in this regard and expressly delineates several factors to be considered by the Court to aid in the determination of the best interests of minor children.

Article 10. Uniform Dissolution of Marriage Act does not have a comparable provision to assess the ability of parents (or parties to a dissolution action without children), to act in their own best interests.

For practitioners the question becomes – how do we assess whether a client is 'simply' exhibiting situational stress or is exhibiting behavior evidencing an impairment such that they are not capable of acting in their own interest? Domestic relations actions are stressful under the best circumstances. It

is often said that we see "the best people, at one of the worst times of their lives." In general, high stress and high conflict, which appear hand-in-hand all too often in domestic relations actions, do not support intelligent, well-reasoned decision-making.

And while some may argue that rash decision-making and/or angry, vexatious litigiousness demonstrates a lack of mental acuity on the part of a litigant, making bad decisions or decisions against one's own interest are not the same thing as being *unable* to act in one's own interest.

## How do we assess 'impairment'?

Rule 1.14 of the Colorado Rules of Professional Conduct sets forth the guidelines for attorneys representing a client under a disability. Specifically, Rule 1.14 permits an attorney to seek the appointment of a guardian ad litem when the attorney reasonably believes the client is unable to act in his or her own interests and provides in relevant part:

(a) When a client's ability to make adequately considered decisions *in connection with the representation* is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

# BEST INTERESTS CONTINUED

(b) Not only can the mental, physical or other condition of the client impose additional responsibilities on the lawyer, the fact that a client is impaired does not relieve the lawyer of the obligation to obtain information from the client to the extent possible.

(c) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot act in the client’s own interest.  
[Emphasis added]

The comment accompanying this rule explains: The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When a client suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, an incapacitated

person may have no power to make legally binding decisions. Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s own well-being. *See In Re The Marriage of Sorensen*, 166 P.3d 254 (Colo. App. 2007).

Colorado courts have dealt with the issue of incompetent parties in other family contexts, specifically in *People in Interest of M.M.*, 726 P.2d 1108, 1118 (Colo.1986), the Supreme Court considered whether it would be an abuse of discretion in a termination of parental rights hearing not to appoint a guardian ad litem for a parent suffering from a mental disorder who was represented by counsel.

The court in that case construed C.R.C.P. 17(c) and stated:

If the parent is mentally impaired so as to be

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PERSONAL INJURY. WORKERS’ COMPENSATION. BUSINESS LITIGATION. INSURANCE DISPUTES.

# BEST INTERESTS CONTINUED

incapable of understanding the nature and significance of the proceeding or incapable of making those critical decisions that are the parent's right to make, then a court would clearly abuse its discretion in not appointing a guardian ad litem to act for and in the interest of the parent. A court would also abuse its discretion in not appointing a guardian ad litem in those situations in which it is clear that the parent lacks the intellectual capacity to communicate with counsel or is mentally or emotionally incapable of weighing the advice of counsel on the particular course to pursue in her own interest. If, however, the evidence shows that a parent, although mentally disabled to some degree, understands the nature and significance of the proceeding, is able to make decisions in her own behalf, and has the ability to communicate with and act on the advice of counsel, then a court might well conclude, and properly so, that a guardian ad litem could provide little, if any, service to the parent that would not be forthcoming from counsel. *People in Interest of M.M., supra*, 726 P.2d at 1120.

C.R.C.P. 17(c) states, in pertinent part that "[t]he court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person."

**Sorensen** provides that the preferred procedure when a substantial question exists regarding the mental competence of a spouse in a domestic relations proceeding is for the trial court to conduct a hearing to determine whether or not the spouse is competent, so that a guardian ad litem may be appointed if needed.

In **Sorensen**, Wife contended that in a dissolution of marriage action, where there are often disputed issues regarding maintenance, division of property,

and debts, important legal and financial decisions need to be made. The Court agreed and concluded that, in accordance with the Supreme Court's holding in ***People in Interest of M.M.*, 726 P.2d 1108, 1118 (Colo.1986)**, it would be an abuse of discretion not to appoint a guardian ad litem in those situations in which the spouse (1) is mentally impaired so as to be incapable of understanding the nature and significance of the proceeding; (2) is incapable of making critical decisions; (3) lacks the intellectual capacity to communicate with counsel; or (4) is mentally or emotionally incapable of weighing the advice of counsel on the particular course to pursue in his or her own interest.

## The Highly Nuanced Practice of Family Law

The interplay of C.R.P.C. 1.14, C.R.C.P. 17(c), and interpreting caselaw and reference to "impairment" and "incompetent" can be confusing. "Impairment" or "incompetence" in this context does not mean that a person is incapable of day-to-day functioning. One can "competently" engage in basic self-care, drive their car, even grocery shop, yet can lack the capacity to engage in critical decision-making, lack the ability to effectively communicate with counsel and/or lack the mental or emotional capacity to weigh the advice of counsel in their own best interest.

Communication and critical thinking are intricately connected. Each requires clarity of thought and expression; both require the ability to manage stress and emotion. In the attorney-client relationship, effective communication and competent decision-making require trust, empathy, understanding and respect. The development of those skills takes time and intention. Understanding how to develop and apply those skills are further steps in developing ourselves as domestic relations practitioners.



# BEST INTERESTS CONTINUED

As DR professionals, we owe our clients more than zealous representation. We owe them understanding and respect. We have an obligation to educate ourselves to recognize when they may need emotional and mental health supports that go beyond our training as legal representatives, and how to access those resources when needed.

Some circumstances to be mindful of include 1) Is the client having difficulty tracking, understanding and executing basic, clear instructions? 2) Does the client persevere on a single issue or desired outcome and demonstrate an inability (not merely stubbornness or resentment) to process and incorporate new information in their decision-making? 3) Does the client demonstrate a sudden, persistent inability to recall information both relevant and material to their case which form the evidentiary basis of one or more of their claims when doing a basic Q & A as part of preparation for a hearing or trial? 4) Does the client exhibit sudden, extreme and persistent emotional volatility or frailty? 5) Does the client have a previously undisclosed diagnosed mental health or personality disorder or medical diagnosis which may

indicate diminished capacity?

These are just a few circumstances which may arise and give a practitioner pause. In situations like these, do not hesitate to ask the client for permission to reach out to their treating physician or therapist, as well as seek guidance from trusted a colleague or mentor, from legal professionals who routinely act as guardian's ad litem, conservators or in other fiduciary capacities, or talk to a mental health professional about the behaviors you are witnessing.

Ultimately, while it may be difficult to define with specificity how to determine exactly when or whether a client lacks the ability to effectively communicate with counsel, lacks the ability to engage in critical decision-making or otherwise weigh the advice of counsel to pursue a particular course of action in their own best interest, we will borrow a phrase from Justice Potter Stewart and say with a reasonable level of professional confidence after many years of practice that: we know it when we see it.

Helen Towlerton and Brittany Frisbie are the BCBA Section Chairs of the BCBA Family Law section.

## WELCOME NEW BCBA MEMBERS

Caitlin Dacus  
Adam Smestad  
Whiting G Dimock  
Catherine Brokenleg  
Maria Gorecki  
James M Sanders  
Clint D Burke  
Michael W Holdtich  
John M Estes  
Sara E Bucar  
Sangeetha E Mallavarapu  
Rachel R Mentz

Marjorie L Sant  
Jennifer L Sullivan  
Brandon Fields  
James T Stark  
Beth A Klein  
John M Vaughan  
Gwyn Ayers  
Gary B Pulitzer  
John R Olsen  
Neil E Piller  
Amanda Biedermann  
Stephen M Moore

# LAWYER ANNOUNCEMENTS

**HutchinsonBlackandCookLLC**

Attorneys at Law

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**HBC is pleased to welcome of counsel to the Firm:**



**Timothy C. Shannon, J.D.**  
Associate

Tim graduated from the University of Colorado School of Law with a Graduate Certificate in Taxation, with Honors, and membership in the Order of the Coif. During law school, Tim was a member of the Colorado Law Review. Additionally, Tim spent a semester as a Legal Extern with the Denver division of the U. S. Securities and Exchange Commission. At HBC, Tim will focus his

practice on business planning, corporate governance, mergers and acquisitions, and the counseling of emerging companies.

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## PROFESSIONALISM ON CALL

November 1	Peggy Goodbody	303.440.5736
November 8	Tim O'Neill	303.776.9900
November 15	Steve Clymer	303.530.2137
November 22	Mike Rafik	303.444.9292
November 29	Gwyn Whalen	303.4438010

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 30 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 the month of August. Thank you to the following attorneys:

**Rick Romeo**  
**Shirin Chahal**  
**Graham Fuller**  
**Lila Sol**  
**Kurt Hofgard**  
**Rick Samson**

## PRO SE VOLUNTEERS

There were four Pro Se Clinics held, thanks to the help of the following attorneys:

**Kathleen Franco**  
**Josh Anderson**  
**Chris Jeffers**  
**John Hoelle**

## PRO BONO CORNER

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



# CLASSIFIED ADS

**Litigation Attorney Needed.** Stinson LLP is seeking a highly motivated associate with 0-2 years of experience to join our business and commercial litigation practice areas in the Fall of 2022 in our Denver, Colorado office. Eligibility for admission or active Colorado license required. Qualified candidates will have exceptional academic performance. Excellent research, writing, analytical, and communication skills are required. Judicial clerkship experience is preferred. Please apply online and provide a resume, cover letter, unofficial law school transcript and a writing sample. Stinson is not accepting recruiter/search firm submission for this position. For questions, contact Jessica Pixler, Attorney Recruiting Manager, at [recruiting@stinson.com](mailto:recruiting@stinson.com).

**Office Space Available.** Nice office on main floor of historic building in Boulder near downtown. Would fit a single lawyer, but may be space for staff if wanted. Off street parking, copier/scanner/fax, in a building with several other lawyers. Contact Dave Harrison – [dave@millerandharrison.com](mailto:dave@millerandharrison.com), 303-449-2830.

**Seeking attorney in Health Care Defense and Professional Liability.** Gordon Rees Scully Mansukhani, a national law firm, has immediate need for an attorney in its Denver office to join its Health Care and Professional Liability Defense team. The ideal candidate will possess three years or more of experience in litigation. Experience in health care defense and professional liability defense is preferred. Click here for more information. Colorado Bar licensure is required. For consideration, please email your resume and writing sample to [taustin@grsm.com](mailto:taustin@grsm.com).

**Litigation Attorney Needed.** Part-time, contract-based. Litigation experience a must. Small, growing practice based in Boulder focuses on construction defect and outdoor recreation litigation, in addition to insurance coverage. For consideration, please submit a resume and legal writing sample to [jennifer@arnettlawyers.com](mailto:jennifer@arnettlawyers.com).



We are updating group participation in BCBA Law Section Groups, and will use your choices to add or remove groups to your BCBA membership profile. Section membership is free, so please join as many sections as you like. We regularly send targeted e-blasts about CLE programs and other news to specific groups, and this will assist us in keeping you up-to-date on group activities.

**Please click here to update your BCBA Group Preferences**

# Boulder<sup>COUNTY</sup> BAR ASSOCIATION

THE BCBA NEWSLETTER IS A MONTHLY ELECTRONIC PUBLICATION BY THE BOULDER COUNTY BAR ASSOCIATION. ARTICLES BY GUEST LAWYERS MAY NOT BE REPRODUCED WITHOUT PERMISSION FROM THE BOULDER COUNTY BAR ASSOCIATION OR THE AUTHORS.

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