

# Boulder County Bar Association Newsletter

## ETHICAL ISSUES INVOLVED IN ADDRESSING ILLEGAL CONDUCT BY AN OPPOSING PARTY

**ERIC J. MOUTZ**

**Justice For  
All Ball  
Page 6**

Parties to a civil case, particularly cases involving a heavily regulated industry, are often tempted to threaten the opposing party with regulatory or criminal complaints in an effort to convince them to settle. An attorney confronted with such a situation must proceed carefully from an ethical and practical perspective. This article will briefly review the ethical issues that confront attorneys in such a situation and recommend several best practices.

As an initial matter, Colo. RPC 4.5 prohibits an attorney from threatening prosecution or regulatory action solely to gain an advantage in a civil matter. The policy basis of this rule is that threatening to invoke the police powers of the state to resolve a civil case mirrors (or may be coextensive with) criminal extortion.<sup>[1]</sup> Consistent with this purpose, there are two significant exceptions to this general rule.

First, Rule 4.5 does not prohibit an attorney from threatening prosecution if the attorney has a motive other than resolving a civil matter. For example, an attorney may threaten prosecution in order to dissuade the opposing party from taking actions that would violate a law or regulation.

## IN THIS ISSUE

ETHICAL ISSUES	1-2
CALENDAR OF EVENTS	4
PRESIDENT'S PAGE	5
JUSTICE FOR ALL BALL	6
BAR FOUNDATION	7
COURT VOLUNTEERS	8
PROFESSIONALISM AND PRO BONO	9
LAWYER ANNOUNCEMENTS	10
COURT ANNOUNCEMENTS	11
CLASSIFIED ADS	12



# ETHICAL ISSUES CONTINUED

Second, Rule 4.5 does not apply when an attorney merely informs an opposing party that his or her conduct is illegal and does not threaten prosecution. For example, an attorney may properly argue that an opposing party has violated the law and that further litigation would likely expose that conduct to collateral regulatory action.

However, even where a communication falls within one of these exceptions, it may be viewed as an improper threat of prosecution if an attorney is also demanding monetary or other concessions in excess of the harm suffered by his or her client, or if the alleged illegal act is unrelated to the subject matter of the litigation.

In most cases it is prudent to avoid statements that might arguably be construed as a violation of Rule 4.5. However, this is not always possible. In some cases, it may be necessary to inform the opposing party of potential regulatory issues for legitimate reasons. For example, in disputes involving co-owners of a business both parties have a joint interest in the ongoing value and viability of the enterprise and it would be prudent to communicate openly about any threats to that business. In other cases, regulatory violations form part of a standard of care that a litigator must argue has been violated by the opposing party. The best practice in navigating such issues is to communicate with an opposing party about potentially illegal conduct clearly and in written form, so as to avoid any misunderstandings about the purpose of the communication or the substance of what has been communicated.

A related issue must be considered. Just as an attorney may not threaten prosecution or regulatory action to gain an advantage, an attorney may not condition settlement of a dispute on an agreement to withdraw a criminal or regulatory complaint.<sup>[2]</sup> An agreement of this nature also risks being void on public policy grounds. This issue often arises in the context of

claims (such as employment discrimination or professional malpractice) that may constitute an independent regulatory violation as well as a civil claim. A defendant in such a case may be unwilling to settle a case unless and until receiving assurance that the opposing party will not also make a regulatory complaint against them. The best practical solution to this sort of impasse is to structure the settlement to include an affidavit or contractual warranties that obviate the factual basis for such a regulatory complaint. These strategies provide both a practical disincentive (i.e. a breach of warranty claim) if a party chooses to late file a claim as well as a potential defense to those complaints (i.e. a sworn statement or warranty from a witness contradicting their complaint).

In conclusion, litigating a case involving potential criminal or regulatory violations by an opposing party presents several ethical traps for the unwary. Many of these issues can be avoided by understanding RPC 4.5 and communicating with opposing counsel or parties accordingly.

(1) It should also be noted that, aside from ethical issues, threatening criminal prosecution or economic harm may amount to criminal extortion under some circumstances. See, e.g. C.R.S. 18-3-207. (2) CBA Formal Ethics Comm. Op. 56: Settlement of Lawyer Malpractice, Withdrawal of Grievance Complaint (March 22, 1980), (stating that a lawyer cannot ethically condition settlement of malpractice claim on withdrawing grievance).

Eric J. Moutz is co-chair of the Civil Litigation Section of the Boulder County Bar Association. Mr. Moutz founded his own litigation boutique in Boulder after nearly a decade as a litigator at two large national firms. Eric specializes in commercial litigation and has handled a number of complex business disputes involving the medical marijuana industry. Mr. Moutz may be reached by telephone at (303) 440-3923 or by email at [eric@moutzlaw.com](mailto:eric@moutzlaw.com).



**LAWPAY**  
CREDIT CARD PROCESSING

**PAYMENT PROCESSING,  
EXCLUSIVELY  
FOR ATTORNEYS.**



**BOULDER COUNTY BAR ASSOCIATION**  
Proud Member Benefit Provider

1.95% per transaction | No swipe required | No equipment needed

[www.LawPay.com/bcba](http://www.LawPay.com/bcba) | 866.376.0950

AffiniPay is a registered ISO/MSP of BMO Harris Bank, N.A., Chicago, IL

## THE BCBA CONFERENCE ROOM

**AVAILABLE TO BOOK**



Please contact  
[Kyle@boulder-bar.org](mailto:Kyle@boulder-bar.org)  
at the bar offices to  
reserve your space.  
Rates are \$25 per  
hour. 303-440-4758



**Juli J Ellen**  
Private Investigator

Local Boulder County  
[www.piboulder.com](http://www.piboulder.com)  
720-215-0876  
[piboulder@gmail.com](mailto:piboulder@gmail.com)

Licensed & Bonded

<ul style="list-style-type: none"> <li>•Former Mediator</li> <li>•Child &amp; Family Investigations</li> <li>•Divorce &amp; Child Custody Issues</li> </ul>	<ul style="list-style-type: none"> <li>•Witness Interviews</li> <li>•Professional Surveillance</li> <li>•Insurance Fraud</li> </ul>
---	---

# CALENDAR OF EVENTS

**Wednesday, November 1**

## **PARALEGAL**

**The Basics of Mediation**

**Presenter: Steve Clymer**

Noon @ BCBA Conference Room

\$12 Lunch

**Register and pay online here**

**Tuesday, November 7**

## **SOLO & TAX, ESTATE PLANNING & PROBATE**

**How to Best Serve Your Clients**

**Presenters: Rebecca Theis & Alyssa Bianchi**

Noon @ BCBA Conference Room

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

**Register and pay online here**

**Wednesday, November 8**

## **BUSINESS**

**Convertible Debt Financings**

**Presenter: Lauren Roberts**

**Noon @ Dickens Tavern, Longmont**

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

**Register and pay online here**

**Tuesday, November 14**

## **EMPLOYMENT & SOLO/SMALL FIRM**

**Legal Malpractice Pitfalls & Traps for Employment Lawyers**

**Presenters: Mike McConnell & Chris Buckman**

Noon @ Justice Center Training Room East

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

**Register and pay online here**

**Wednesday, November 15**

## **AVAILABILITY OF LEGAL SERVICES, FAMILY & ELDER**

**Dealing With Clients or Opposing Parties Who May Have Limited Capacity**

**Presenters: Ericka Fowler, Renee Ezer, Todd Stahly, & Sandy Tobin**

**1 General and 1 Ethics credit applied for**

Noon @ Justice Center Training Room East

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

**Register and pay online here**

**Wednesday, November 15**

## **NEW/YOUNG LAWYERS**

**Tax, Estate Planning & Probate Law Lunch**

Noon @ BCBA Conference Room

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

**Wednesday, November 15**

## **IN-HOUSE COUNSEL**

**Copyright Law Developments - 2017 Highlights**

**Presenters: Dave Rein & Katie Schwalb**

4:30 @ Zayo Group

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

**Register and pay online here**

**Thursday, November 16**

## **BANKRUPTCY**

**Monthly Lunch and Roundtable**

Noon @ Kathmandu

**Friday, November 17**

## **AVAILABILITY OF LEGAL SERVICES**

**Monthly Roundtable**

Noon @ BCLS

**Wednesday, November 29**

## **CRIMINAL**

**COLAP Presents How to Make Stress Work for You**

**Presenter: Sarah Myers**

**1 General and 1 Ethics Credit**

Noon @ Justice Center Training Room East

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

**Register and pay online here**

**Friday, December 1**

## **ALL SECTIONS**

**Ethics and Professionalism in Divisive Times**

**Presenters: Judges Butler & Brodsky, Magistrate**

**Gunning, Jeff Rose, and Ron Jung**

**2 General and 2 Ethics Credits**

Noon @ Justice Center Jury Assembly Room

\$40 CLE, \$25 New/Young Lawyer

**Register and pay online here**

## **BOULDER IDC - WEDNESDAY, DECEMBER 6**

**Unbundling (Services) - It's Not Half Bad!**

**Speaker: Honorable Daniel M. Taubman - Colorado Court of Appeals, Danae Woody, JD - Denver Attorney**

**11:30 - 1:15 @ Millenium Harvest House, \$27 IDC Members, \$32 Non-Members, \$35 Walk in**

**1 General CLE . To RSVP, go to [boulderidc.org](http://boulderidc.org)**



# PRESIDENT'S PAGE

## RENEE EZER

Many of us practice in Boulder because we believe that if sustained work-life balance can actually be achieved, we can achieve it here. We have the mountains, clean air, a creek that runs right through town, walking and running trails, music, theater, restaurants, two pedestrian malls, yoga studios, and spas. National Geographic Explorer recently concluded that the happiest Americans live in Boulder. And yet, many attorneys practicing law here have recently reported that they feel exhausted, tired, burned out. I, too, can get overwhelmed from time to time, no matter how carefully I try to guard against it.

Brett Landis, Managing Attorney of Boulder County Legal Services, told me last week that early in career, one of her mentors taught her to protect herself from secondary and vicarious trauma in the practice of law. These terms refer to what we take on, as lawyers, in the representation of clients who have experienced trauma or are involved in traumatic litigation, or what seeps in when our cases involve highly emotional or traumatic facts and evidence. Compassion fatigue can also produce secondary trauma symptoms. Judges are particularly susceptible to vicarious trauma because they are exposed to many more cases than attorneys are. Brett was fortunate. I don't know anyone else who was mentored in that way.

People who experience secondary or vicarious trauma can become irritable, unreasonable, anxious or depressed. They might have trouble concentrating during the day or sleeping at night. They might disconnect emotionally from people and activities that used to bring them joy and comfort, feel chronically stressed or burned out. These symptoms can often be exacerbated by other pressures in daily life, and can lead to unhealthy coping strategies, such as substance abuse and other addictive behaviors. These strategies might work for a while, but are not a sustainable, long term solution to the problem.



We are trained to manage conflict and stress for other people, but most of us have not been trained to create a healthy lifestyle and practice for ourselves. I think this is the critical part of our education that is lacking. To address this void, and to promote improved health and well-being in the legal profession, the ABA National Task Force on Lawyer Well-Being recently issued a 75-page report with practical recommendations for positive change. This is ground-breaking and revolutionary, and I believe that it will create the impetus for trainings at the state and local levels, which ultimately will benefit all of us. The BCBA Executive Committee and Staff will attend the first CLE offered on this material in November. The Criminal Law Section of the BCBA is also sponsoring a CLE on November 29, 2017 at noon at the Justice Center entitled, "COLAP Presents: How to Make Stress Work for You." This is going to be an excellent program, and I expect it will be very well-attended.

We work in a community that promotes and encourages all of us to live our best lives, in and out of our practices. I think the time has come to increase our awareness and learn how to create our own best practices to help relieve, or avoid altogether, symptoms of secondary trauma and stress, as we strive for that illusive work-life balance.

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

# 2018 Boulder County Bar Association



## JUSTICE FOR ALL BALL

Saturday, February 24 at 7 pm

The Studio

3550 Frontier Avenue, Boulder

### About JFAB

16 years ago, the Boulder County Bar Association started a fundraiser called Food Wine Jazz Art to benefit Colorado Legal Services. While this event was a great success, recent cuts to the federal budget made us realize we needed to rebrand our event to draw a larger crowd and raise even more money for legal services.

The Boulder County Justice For All Ball will still be geared toward the legal community, but this year we are expanding further to include partners, clients, and friends. We are holding the event on a Saturday evening to accommodate those who find a weeknight event hard to attend. We are also hoping to bring in members who have never attended a bar event. Our new space, The Studio, is an industrial chic venue with ample parking that should bring a fun new feel to our fundraiser.

We will have music and dancing led by the Diamond Orchestra. Their fun, sophisticated and soulful ensemble keeps guests of all ages and tastes entertained at the top venues in Colorado and beyond. There will also be a silent auction with some fabulous opportunities.

Hors d'oeuvres will be available along with delicious desserts from Bridge House Catering.

This year also brings new sponsorship opportunities if you are unable to attend but still want to contribute to a worthy cause. We are asking for Young Lawyer and Paralegal sponsorships to allow those that might not have the funds in their budget to purchase a ticket. We are also seeking silent auction donation items. Traditional sponsorships are still available. Please contact [Laura@boulder-bar.org](mailto:Laura@boulder-bar.org) for more information.

# BOULDER COUNTY BAR FOUNDATION

## The importance of joining the Boulder County Bar Foundation

The Boulder County Bar Foundation was organized in 1983 as a 501(c)(3) organization to raise donations from members of the Boulder County Bar Association, invest the donations in an endowment fund that would grow in principal and distribute proceeds from the endowment fund to legally-related 501(c)(3) organizations in Boulder County, Colorado. The Foundation believes that support of legal education and law related projects is one of the best way to increase our profession's public image while providing public service to those in need in Boulder County.

The Foundation funds its annual grant requests in September from the endowment fund and annual donations from its members, who are Fellows. The Foundation currently has an endowment fund of approximately \$240,000 and 285 Fellows.


The Foundation made grants totaling \$21,000 during 2016 to the following Boulder County non-profit organizations and programs:

- Boulder County Legal Services
- 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 and YWCA

All current members of Boulder County Bar Association are encouraged to become Fellows of the Foundation by pledging to make donations of \$150 annually over a ten-year period. Fellows who have completed their ten-year commitment of

\$1,500 become Life Fellows. Many Life Fellows continue to contribute beyond their initial commitment and are recognized as Sustaining Life Fellows (continued support beyond \$1,500), Life Benefactor Fellows (continued support between \$2,500 and \$5,000) and Life Leadership Fellows (continued support over \$10,000).

We are hoping to increase the Fellow membership so that the Foundation can continue to assist those who are unable to find access to justice and further fund successful legal programs in Boulder County. If you would like additional information or are interested in becoming a Fellow of the Foundation, please contact Christine Hylbert, the Foundation's Executive Director, at [christine@boulder-bar.org](mailto:christine@boulder-bar.org).

**Plum Creek Forensic Lab, LLC**  
**Darla McCarley-Celentano**   
**Handwriting/Document Expert**  
**Box 21, Castle Rock, CO 80104**  
**303/663-2450 or 303/229-8002**  
**Email: [plumcreekforensics@att.net](mailto:plumcreekforensics@att.net)**  
**Website: [plumcreekforensics.com](http://plumcreekforensics.com)**

**Forensic analysis of: handwriting, printing, signatures/forgeries, tracings, paper, inks, typewriters, fonts, photocopies, facsimiles, printing processes, alterations, erasures and obliterations.**

**Formal training/internship with the Colorado Bureau of Investigation.**

**Civil, criminal and private cases.**



# VOLUNTEERS NEEDED

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](mailto: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.

303.443.8010 | [CELAW.COM](http://CELAW.COM)

We've  
**GROWN**



Your Colorado Health Law Team  
Experienced | Innovative | Comprehensive | Trusted





# PROFESSIONALISM ON CALL

November 6	Antonin Dworak	303.776.9900
November 13	Steve Clymer	303.530.2137
November 20	Mike Rafik	303.444.9292
November 27	Gwyn Whalen	303.443.8010

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 & 2018 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](mailto:laura@boulder-bar.org) if you can help in Boulder, or [susan.spaulding@longmontcolorado.gov](mailto:susan.spaulding@longmontcolorado.gov) if you can help in Longmont.

**Boulder: December 14, March 22, June 21**

**Longmont: November 28, February 27, May 22**

## PRO BONO CORNER

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

## PRO BONO REFERRALS

Thirteen cases were referred during the month of September. Thank you to the following attorneys:

**Norm Aaronson CULADP**

**Rebecca Boyle**

**Evan Branigan**

**Lauren Carpenter**

**Christina Ebner**

**Keith Edwards**

**Graham Fuller**

**Kurt Hofgard**

**Kimberly Lord**

**Colene Robinson CULADP**

## PRO SE VOLUNTEERS

**Josh Anderson**

**Evan Branigan**

**Kathleen Franco**

**Ainagul Holland**

**Chris Jeffers**

**Tucker Katz**

**Zachary LaFramboise**

**Michael Mophew**

Thank you to the following attorneys who agreed to mentor a pro bono attorney:

**Josh Anderson**

**Tucker Katz**

Thank you to the following psychologists who accepted a pro bono referral:

**Dr. Shirley Thomas**

## BCAP VOLUNTEERS

Thank you to the following attorneys who accepted a referral for the Boulder County AIDS Project in September:

**Mary Jo Lowery**

# LAWYER ANNOUNCEMENTS



**LYONS GADDIS**

ATTORNEYS & COUNSELORS

announces that

**JEFFREY S. ROSE**

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

**Civil and Business Litigation**

jrose@lyonsgaddis.com  
515 Kimbark Street • Second Floor  
Longmont, Colorado 80502-0978  
303-776-9900 • [lyonsgaddis.com](http://lyonsgaddis.com)

Congratulations to Peter Dietze who has been selected to receive the William Lee Knous Award, Colorado Law's highest alumni honor. Awarded annually since 1960, the Knous Award recognizes outstanding achievement and sustained service to Colorado Law. Dietze recently retired from Dietze and Davis, P.C., where his practice focused on real estate title insurance law. More information is available [here](#).

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

*Please join us!*

**Boulder District Court Judge  
*Nancy W. Salomone*  
Swearing-in Ceremony**

***When:* Friday, November 3, 2017  
4:30 p.m.**

***Where:* Boulder County Justice Center  
1777 6<sup>th</sup> St.  
Boulder, CO 80302  
Courtroom F, First Floor**

# CLASSIFIED ADS

**LITIGATION SPECIALIST.** Civil. Criminal. CJA approved vendor. Trial support. Mobile notary. Roz Lynn Dorf, M.A. Freelance Paralegal Services 303.494.6935.

**CONTRACT BOOKKEEPER.** Get your books in order, maximize cash flow. Using QB online/ legal software. Trust/ general banking. A/P, A/R, invoicing, financial reporting, payroll. CHRISTINA STANTON 720.254.2935 or [clmstanton@gmail.com](mailto:clmstanton@gmail.com).

**VIRTUAL PRIVATE OFFICES AND CONFERENCE ROOM AVAILABLE AT 595 CANYON BLVD ACROSS FROM THE JUSTICE CENTER.** Including receptionist, parking, fax, and copy available. 303.444.1700

**OFFICE SPACE AVAILABLE AT CANYON PROFESSIONAL BUILDING ACROSS FROM JUSTICE CENTER.** Full services include receptionist, law library, conference room, fax, phones, kitchenette, utilities, parking and other amenities. Offices have large windows and a great

view of the Flatirons. \$800/ month gross rent. Short term leasing available. Short distance to Pearl Street Mall. 303-444-1700

**OFFICE SPACE FOR RENT IN PROFESSIONAL BUILDING.** One or two rooms available with reception area/use of conference room. Internet/Networked Copier/fax/Printer included. Telephone Line can be added for extra \$\$ . Short/Long Terms available. Plenty of parking. Suite is shared with immigration law firm. \$650. Contact Igor by phone: 303-865-4546 or [iserbinin@gmail.com](mailto:iserbinin@gmail.com)

**ESTABLISHED BOULDER LAW FIRM IS LOOKING FOR A PART-TIME WORKERS COMPENSATION PARALEGAL.** Workers' Compensation experience is a plus. Flexible Schedule. Salary based on experience Please send a cover letter including salary requirements along with your resume to [Elaine@taussiglaw.com](mailto:Elaine@taussiglaw.com)



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.

COMMERCIAL ADVERTISING INFORMATION IS AVAILABLE BY CONTACTING  
[laura@boulder-bar.org](mailto:laura@boulder-bar.org)  
OR THE BAR'S WEBSITE  
[www.boulder-bar.org](http://www.boulder-bar.org)