

Boulder COUNTY

BAR ASSOCIATION

STRAIGHT TALK WITH JUDGES

The BCBA is so pleased to be joining with the Colorado Judicial Institute to present Straight Talk with Judges: An Interactive CLE with Judges and Attorneys. This is the first time this popular program will be held in Boulder, and is a fantastic opportunity to see three Supreme Court justices and one Court of Appeals judge, along with the head of OARC and many other prestigious attorneys. This CLE is designed to promote education and interaction. Participants will have one ethics track and four general tracks from which they can make inquiries and gain insight from established judges and attorneys.

**November
Side Bar CLE
Page 3**

Straight Talk looks at some of the thorniest concerns in today's legal environment. Topics range from crafting compelling arguments to the most recent ethical issues... all from the perspective of Colorado judges. And our small session size and interactive format mean you get to ask the questions the judges are answering.

Dean S. James Anaya of the University of Colorado Law School will give a welcome and then each participant will be registered in Current Ethics Trends presented by District Judge Edward C. Moss and Peter G. Koclanes, Esq. Participants can then choose two of the following topics: Recovering Your Inner Atticus Finch; How to Persuade Judges to See it Your Way: Avoid Small Mistakes with Potentially Big Consequences that Lawyers Make in Court, or Effective Written and Oral Advocacy.

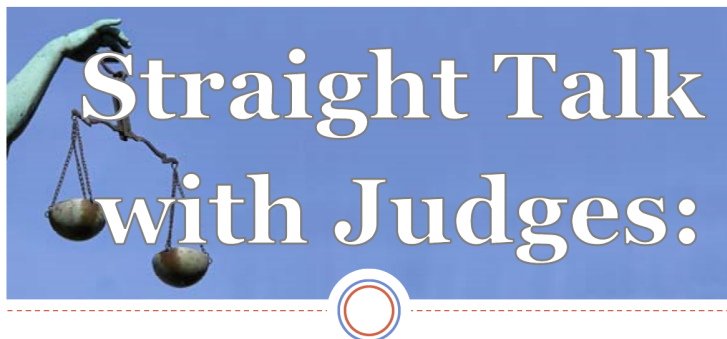
Please consider attending this event so these leaders walk away with an appreciation of the caliber of the Boulder County bar and our commitment to the practice of law.

[Click here to register for Straight Talk with Judges](#)

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An Interactive CLE with Judges and Attorneys

Hosted by the **Colorado Judicial Institute**
and the **Boulder County Bar Association**
Sponsored by **Caplan & Earnest LLC**
and the **University of Colorado**

The Colorado Judicial Institute and the Boulder County Bar Association are pleased to present this popular CLE program, for the first time in Boulder, designed to promote education and interaction with some of Colorado's top jurists and attorneys. Participants will have one ethics track and four general tracks from which they can make inquiries and gain insight from established judges and attorneys.

November 20, 2019

LOCATION:

CU Law School, Wolf Building
2450 Kittredge Loop Road
Boulder, Colorado, 80309

TIME:

Registration and Networking: 5:00 p.m. - 6:00 p.m.
Tracks: 6:00 p.m. - 8:00 p.m.

CLE CREDITS:

2 General Credits + 2 Ethics Credits

PRICING:

CJI/BCBA Members: \$100
Non-Members: \$125
Young Professionals (five or less years in practice)
and Student: \$50

Tracks

Ethics Credits

(All attendees will be registered for the ethics credits)

Current Ethic Trends

District Judge Edward C. Moss
and Peter G. Koclanes, Esq.

General Credits

(Pick two)

Rediscovering Your Inner Atticus Finch; Learn to Love Your Job by Being the Lawyer You Always Wanted to Be

Colorado Court of Appeals Judge Elizabeth L. Harris
and Jessica Yates, Esq.

How to Persuade Judges to See it Your Way: What They Didn't Teach you in Law School

Colorado Supreme Court Justice William W. Hood, III
and Gary Lozow, Esq.

Avoid Small Mistakes with Potentially Big Consequences that Lawyers Make in Court

Colorado Supreme Court Justice Carlos A. Samour, Jr.
and Mark A. Fogg, Esq.

Effective Written & Oral Advocacy

Colorado Supreme Court Justice Richard L. Gabriel
and Shannon W. Stevenson, Esq.

To register online or for more information

ColoradoJudicialInstitute.org

Questions? Call CJI at 303-766-7501



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CALENDAR OF EVENTS

Tuesday, November 5

BCBA ANNUAL JUDGES' DINNER

5:30 - 9:00 PM @ St. Julien Hotel (900 Walnut St)

\$90 BCBA Member, \$75 New/Young Lawyer

[Please click here to register](#)

Wednesday, November 6

PARALEGAL

Paralegal Communication Tips in Estates/Trusts

Presented by Renee Ezer

Noon - 1:00 pm BCBA Offices (3269 28th Street)

\$12 lunch only

[Please click here to register](#)

Thursday, November 7

ALL SECTIONS LONGMONT CLE

The Value of Community Mediation

Presented by Susan Spaulding

Noon - 1:00 pm @ Dickens Tavern (300 Main Street, Longmont)

\$41 CLE & Lunch, \$31 New/Young Lawyer, \$16 Lunch only

[Please click here to register](#)

Wednesday, November 13

BUSINESS

Food & Beverage 2019

Presented by Fern O'Brien

Noon - 1:00 PM @ BCBA Offices (3269 28th Street)

\$35 CLE & Lunch, \$20 New/Young Lawyer, \$10 No CLE

[Please click here to register](#)

Thursday, November 14

ALL SECTIONS SIDE BAR CLE

CLIENT-CENTERED PRICING: PROFITABLE

ALTERNATIVES TO THE BILLABLE HOUR

Presented by Lauren Lester

4:00 - 6:00 PM @ BCBA Offices (3269 28th Street)

\$35 CLE and social, \$20 New Lawyer, \$10 No CLE

[Please click here to register](#)

Tuesday, November 19

FREE LEGAL CLINIC IN LONGMONT

5:30 PM @ Longmont Senior Center (910 Longs Peak Ave)

[Please click here to volunteer](#)

Tuesday, November 19

INTELLECTUAL PROPERTY

Patenting Artificial Intelligence Inventions

Presented by Douglas Link

CLE & Social 4:00 - 5:00 pm @ BCBA Offices (3269 28th Street)

\$35 CLE & Lunch, \$20 New Lawyer, \$10 No CLE

[Please click here to register](#)

Wednesday, November 20

ALL SECTIONS CLE

Straight Talk with Judges: An Interactive CLE

Co-hosted by BCBA & Colorado Judicial Institute

2 General and 2 Ethics Credits

6:00 - 9:00 PM @ CU Law School, Wolf Building (2450 Kittredge Loop Road)

\$100 BCBA/CJI Members, \$50 New/Young Lawyer

[Please click here to register](#)

Thursday, November 21

NATURAL RESOURCES

Conservation Easement Law

Presented by Peter Nichols

Noon - 1:00 PM @ BCBA Offices (3269 28th Street)

\$35 CLE & Lunch, \$20 New/Young Lawyer, \$10 No CLE

[Please click here to register](#)

NOVEMBER SIDE BAR: CLIENT-CENTERED PRICING

Join us on Thursday, November 14 for our next Side Bar program. Lauren Lester, Esq., will present Client-Centered Pricing: Profitable Alternatives to the Billable Hour. This will be an introduction to modern representation, covering:

- What is client-centered pricing?
- Why doesn't the billable hour work for lawyers, and why doesn't it work for clients?
- Alternatives to the billable hour
- How to implement Client-Centered Pricing with practical tools like process mapping, and using a budget to set pricing

Following the CLE presentation, we will have a networking and social hour with appetizers, wine and beer included. [Please click here to register.](#)

ATTORNEYS, CLIENTS, AND NECESSARY THIRD PARTIES: THE ATTORNEY-CLIENT PRIVILEGE AFTER FOX V. ALFINI

COLLEEN M. KOCH

It's a situation that arises across practice areas: a client requests to have a third party sit in on a meeting with the attorney and assist. While ordinarily an attorney would refuse so as to preserve the attorney-client privilege,^[1] what happens when the client (or attorney) believes that this third party's presence is necessary, due to the client's mental condition, injuries, or other mitigating factors? What level of "necessity" is required to protect these communications and allow the attorney-client privilege to attach?

Until recently, this area of the law was largely unexplored in Colorado. Although Colorado courts have recognized that the presence of a third party will not necessarily negate the attorney-client privilege,^[2] the Supreme Court addressed the standard governing the necessity of a third party's presence for the first time in *Fox v. Alfini*, 2018 CO 94, 432 P.3d 596 (Colo. 2018).^[3]

Fox v. Alfini

In *Fox*, a woman sought legal representation following a stroke for a medical malpractice claim, bringing her

parents with her.^[4] Her attorney recorded the initial consultation to ensure completeness of his file, although it is unclear what effort he made to determine whether Fox's parents' presence was necessary to facilitate the consultation.^[5] The defendants moved to compel production of the recording, arguing the presence of Fox's parents meant it was not privileged.^[6] Fox opposed, contending her parents' presence was necessary due to her diminished mental capacity.^[7]

In support of her necessity argument, Fox provided an "after-the-fact" evaluation that noted her "ongoing mild difficulties, weaknesses, and/or impairments with her neuropsychological functioning."^[8] In response, defendants submitted social media records in which Fox discussed her diminished symptoms and stated "it's as if nothing...happened."^[9] The district court concluded that Fox's cognition was not so affected such that her parents' presence was necessary and granted defendants' motion.^[10]

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Bradley Unkeless



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Daniel Wartell



Zachary Warzel

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

ATTORNEY CLIENT PRIVILEGE CONTINUED

After granting Fox's C.A.R. 21 petition, the Supreme Court affirmed the district court's ruling.^[11] The court first noted the prevailing Colorado rule that in order to maintain privilege over attorney-client communications involving a third party, courts require "both that the client have an expectation of confidentiality in the communication and that the third party's presence be necessary to facilitate that communication."^[12]

The court then discussed the "open question" of the standard governing "necessity" in Colorado.^[13] After surveying cases from various jurisdictions, the court rejected Fox's argument that necessity should be determined based upon the attorney's "subjectively reasonable belief" and held that an objective necessity standard applies.^[14] More specifically, the court held "the presence of a third party during an attorney-client communication will ordinarily destroy the privilege unless the third party's presence was reasonably necessary to the consultation or another exception applies."^[15]

Turning to the facts of Fox's case, the court determined that the district court did not abuse its discretion in finding she did not show the requisite necessity, although it held open the possibility that, under different factual circumstances, the privilege could be preserved.^[16]

A Remaining Concern

In analyzing *Fox*, one clear question remains: what is the objective level of "necessity" required to protect the communications between an attorney, a client, and a third party?

In his concurrence, Justice Hood highlighted the importance of this question, stating that while he agreed with the majority's opinion, he did so "reluctantly," because of concerns about the "chilling effect" of the court's opinion, for, "[a]fter all, privilege could be forfeited even when that prospective client is a loved one thirty-five days out from a stroke that might have caused brain damage."^[17] Will *Fox* indeed have a chilling effect and prevent attorneys and clients from including necessary third parties out of fear that their communications could later be discovered? Moreover, even if the third party's presence seems "necessary enough," what sort of evidence is sufficient to prove this

necessity to a court? Will expert testimony or an independent medical evaluation be required?

Although the ramifications of *Fox* are not yet clear, one thing is certain: attorneys will be well-served to be increasingly cautious before inviting a third party into their communications with their clients.

Colleen M. Koch is an associate at Hutchinson Black and Cook LLC in Boulder. She is a current chair of the BCBA Civil Litigation Section.

^[11] The attorney-client privilege is a creature of both statute and common law in Colorado. The privilege is codified at Colo. Rev. Stat. § 13-90-107(1)(b), and applicable case law provides nuance with respect to, for example, waiver and exceptions to waiver.

^[12] See, e.g., *Wesp v. Everson*, 33 P.3d 191, 197 n.9 (Colo. 2001) (noting that the rule that communications made in the presence of a third party are not privileged is "not absolute"); *D.A.S. v. People*, 863 P.2d 291, 295 (Colo. 1993) ("[T]he presence of a third party has been found not to defeat the requirement of intended confidentiality where the help of an interpreter is necessary to enable the client to consult the lawyer, or in cases where the client has one of his agents attend the conference, or the lawyer calls in his clerk or confidential secretary.").

^[13] See *id.* at 601 ("[T]he applicable standard governing necessity appears to be an open question in Colorado.").

^[14] *Id.* at 599.

^[15] *Id.*

^[16] *Id.*

^[17] *Id.*

^[8] *Id.* The report did note that Fox was able to maintain her job as a middle school counselor. *Id.*

^[9] *Id.* (omission in original).

^[10] *Id.* Fox subsequently moved for reconsideration, asserting for the first time that the attorney-client privilege attached because (1) her parents were also prospective clients, (2) her parents were her agents and shared legal interests with her, and (3) the work-product doctrine protected the recording from discovery. *Id.* The district court denied the motion, apparently declining to rule on arguments set forth for the first time in a motion for reconsideration. *Id.*

^[11] *Id.* at 600.

^[12] *Id.* at 601 (citing cases).

^[13] *Id.*

^[14] *Id.* at 601-2.

^[15] *Id.*

^[16] *Id.* at 603. The court also held that the district court did not abuse its discretion in refusing to consider the arguments raised by Fox for the first time on her motion for reconsideration and did not reach the merits of those arguments, including whether the work-product doctrine could have shielded the recording from production. *Id.*

^[17] *Id.* at 604 (Hood, J., concurring).

PRESIDENT'S PAGE

JENNIFER LORENZ

President George Washington is originally responsible for proclaiming Thanksgiving as a holiday. On November 26, 1789, President Washington declared a day of “public thanksgiving and prayer.”

We credit President Lincoln for actually declaring Thanksgiving a federal holiday. In 1863, during the Civil War, Lincoln called a national day of “Thanksgiving and Praise to our beneficent Father who dwelleth in the Heavens.”

To boost the economy and lengthen the holiday shopping season during the Depression, President Franklin D. Roosevelt proclaimed Thanksgiving on the third Thursday in November. This move was controversial and some states continued to celebrate Thanksgiving on the fourth Thursday of the month. Thankfully, Congress acted in 1941 passing a joint resolution that officially established the current day of Thanksgiving.

The President of the United States is gifted with the honor of pardoning certain lucky turkeys every year. This well-known tradition is rather new, but its roots are quite old. The Turkey Pardon originally started in 1865 when President Lincoln pardoned a Christmas turkey his young son had befriended. George H.W. Bush was the first President to issue an “official pardon” sparing an innocent turkey’s promising life during a ceremony in the White House Rose Garden in 1989.

Many states have unique laws that indirectly impact Thanksgiving dinners. States like Alabama allow you to purchase beer and wine, but not spirits, on Thanksgiving.

If you live in Pennsylvania, while preparing for your Thanksgiving guests to arrive, don't get caught sweeping dirt and dust under your rug because it's illegal. In New York City, it is illegal to



shake a dust mop out of a window.

Don't invite a moose to Thanksgiving dinner in Fairbanks, Alaska, because it is illegal to feed any alcoholic beverage to a moose.

If you are celebrating Thanksgiving in city of Gary, Indiana, make sure to brush your teeth after enjoying your dinner because it is illegal to go to a movie theater or ride in a public streetcar if you have eaten garlic in the past four hours.

Finally, if you were planning on hosting Thanksgiving dinner, or any other event at a cemetery, think twice in Claremont, New Hampshire, because it is illegal to get drunk or to picnic in a cemetery.

Clearly these are important laws everyone should know.





BOULDER COUNTY BAR FOUNDATION

Our mission is to advance justice and understanding of the law in Boulder County by providing grants to those Boulder County nonprofits which increase education and awareness 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.

We are pleased to announce the recipients of our 2019-2020 grants:

- Boulder County Legal Services
- Boulder IDC
- Bridge to Justice
- Children First of the Rockies
- Immigrant Legal Center of Boulder County
- J-SUP: Law Center for the Unhoused
- Safe Shelter of St. Vrain Valley
- Safehouse Progressive Alliance for Nonviolence (SPAN)
- YWCA

In addition to these grants and to show our commitment to programs which further education about the law in Boulder County, the Foundation will be funding the entry fees for Boulder and St. Vrain public school mock trial teams. Past participants have included Boulder, Erie, Fairview, Justice, Monarch, Niwot, Peak to Peak, and Silver Creek. We are excited to support these future lawyers!

We urge you to consider becoming a member of the Boulder County Bar Foundation. For more information, please visit our website at boulderbarfoundation.org, or email Foundation@boulder-bar.org.

Invest in justice.

Invest in the future.

Invest in the community.

The Boulder County Bar Foundation is a 501(c)(3) that invests donations from its Fellows in an endowment fund, the proceeds of which are awarded to legally-related 501(c)(3) organizations in Boulder County. Grants have regularly been awarded to help fund legal services for low income, immigrant and displaced members of the community; high school mock trial teams and court-ordered co-parenting classes as well as court access for victims of domestic violence. The Foundation always has grant applications for more than it can give. Become a Fellow and help grow the endowment - it's good for justice, it's good for the future, it's good for the community and it's good for you.

**Invest in yourself.
Become a Foundation Fellow today.**

2020 PROBATE COURT DATES

Beginning January 2020 the Probate days for the Boulder County District Court will be Tuesday for Division 3, Wednesday for Division 2, and Thursday for Division 5.

January 14 for division 3
January 15 for division 2
January 16 for division 5
February 05 for division 2
February 11 for division 3
February 13 for division 5
March 10 for division 3
March 11 for division 2
March 12 for division 5
April 7 for division 3
April 8 for division 2
April 9 for division 5

May 5 for division 3
May 6 for division 2
May 7 for division 5
June 2 for division 3
June 3 for division 2
June 4 for division 5
July 14 for division 3
July 15 for division 2
July 16 for division 5
August 11 for division 3
August 12 for division 2
No Probate docket for division 5

September 8 for division 3
September 9 for division 2
September 10 for division 5
October 6 for division 3
October 7 for division 2
October 8 for division 5
November 3 for division 3
November 4 for division 2
November 5 for division 5
December 1 for division 3
December 2 for division 2
December 3 for division 5

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PROFESSIONALISM ON CALL

November 4	Mark Langston	303.440.9684
November 11	Meghan Pound	303.443.8010
November 18	Tom Rodriguez	303.604.6030
November 25	Karl Kumli	303.447.1375

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 2019/2020 Free Legal Clinics at the BCBA Office (3269 28th Street, 2nd Floor), the Lafayette Senior Center (103 Iowa Avenue), 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 Lafayette, or susan.spaulding@longmontcolorado.gov if you can help in Longmont.

Lafayette: January 14, April 14, July 14

Longmont: November 19, February 25, May 19, August 25

Boulder: December 19, March 19, June 18

THANKS TO OUR VOLUNTEERS

The Lafayette Free Legal Clinic was held on October 15. Thank you to the attorneys who were able to serve as volunteers:

Bob Cooper
Scott Hamerslough
Jodi Martin
Laurel Herndon
Jodie Gilbert
Howard Bernstein

Mike Foote
Mike Rafik
Stephen Cook
Brett Landis
Ozzie Mendoza
Richard Selinger

PRO BONO REFERRALS

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

John Estes

PRO SE VOLUNTEERS

Kathleen Franco

Jennifer Huston

Tucker Katz

Zachary LaFramboise

Michael Morphew

Patricia Riley

PRO BONO CORNER

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



UPCOMING LONGMONT CLE PRESENTATIONS

Thank you all for your incredible support of our Longmont CLE's. The Dickens Tavern in Longmont will be hosting our monthly East County Meetings.

Please attend the presentation The Value of Community Mediation, presented by Susan Spaulding, to be held at the Dickens Tavern on November 7.

Susan Spaulding will be presenting about the value of community mediation as part of the continuum of conflict resolution that includes the courts, the work of private attorneys, prosecutors and public defenders, restorative justice, and private mediators. She will highlight the work of Longmont Mediation Services, which includes conflict resolution and mediation in the context of landlord/tenant, neighbor/neighbor, business/customer, and family relationships. Beyond mediation, although the office does not function as advocates, the office does provide legal information and resource referral to all sides of a conflict.

She will also present about coming to mediation as a result of her experience as a family law attorney, understanding that many types of conflict involving on-going relationship are poorly resolved through the formal legal process, after seeing, in fact, how many relationships are permanently destroyed by trying to force a relational problem into the more rigid framework of our law system. The Longmont Mediation Services office does work closely with the legal community in Longmont, and is willing to invest mediation time in divorce, civil return, and eviction mediations in which one



or both parties are resource-poor and may be represented by a low fee or pro bono attorney. The office also provides mediation services for the eviction hearings each Friday, both in Longmont and Boulder.

Susan Spaulding is an attorney in Longmont. Susan clerked for J. Morris Sandstead in the 20th Judicial District, practiced family law for four years, and has been a mediator for 18 years. She has coordinated Longmont Mediation Services for the City of Longmont for 12 years. Please [click here](#) to register.

UPCOMING LONGMONT CLE PRESENTATIONS

December 5

**Proactively Troubleshooting Ethics Issues
Presented by Karen A Hammer**

February 6

**Cryptocurrency Law and Associated Legal Ethics
Concerns
Presented by Micah Schwalb**

WELCOME NEW BCBA MEMBERS

Charles F Koch
Michael L Chiropoulos
Injy Johnstone
Brian L Allard
Brittany A Frisbie
Jeffrey P List

Sean I McGhie
Todd M Olinger
Sean R King
Dianne A Van Voorhees
Sara E Bucar
Christine Bottomley

Moriah Arnold
Amelia Black
Margaret Kopel
Thomas Morales

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PERSONAL INJURY LITIGATION PARALEGAL. Small, established, highly rated Boulder personal injury law firm seeking paralegal / legal assistant with litigation and personal injury experience; excellent Word, Excel and writing skills required. Dog friendly office with VSP, health, vision, dental insurance and 401k. Please submit resume, cover letter and salary requirements to lawyers@sloatlaw.com.

OFFICE SPACE FOR LEASE. Single 190 sq. ft. office in office suite with a CPA firm and financial advisor. Convenient location at 1510 28th Street, plenty of parking. Includes use of conference room, kitchen and internet access. Monthly rent \$1,000. Contact Brian at brian@gibbscpas.com, or 303-449-7334.

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VIRTUAL PARALEGAL. Have a virtual office? You need a virtual paralegal. Civil. Criminal. Mobile Notary. References. Roz Lynn Dorf, M.A., Freelance Paralegal Services. (303) 494-6935 .

KNIGHT NICASTRO IS HIRING FULL TIME ATTORNEYS WITH EXPERIENCE IN CIVIL LITIGATION. Preferred candidate would have experience in trials, taking depositions and arguing motions. Some travel required. Competitive compensation, CLE budget, medical, dental, company matching 401(k). Email resume to mcminn@knightnicastro.com

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LEGAL SUPPLIES FREE FOR A NEW ATTORNEY. Legal materials available: 300+ dividers for litigation notebooks, some large empty notebooks, 1-125 series, deposition binder & misc. supplies. Contact sharris555@comcast.net.

BCBA JOBS BOARD NOW ACTIVE

We have added a Jobs Board and classified page to the BCBA website; [please click here to view](#). Do you have a job posting or classified you would like listed on the BCBA Jobs Board? The pricing for these listings is for 30 days: \$40 for current BCBA members, \$60 for non-members. Submitted listings will also run in the BCBA newsletter. [Please click here](#) to submit your listing.



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Boulder COUNTY
BAR ASSOCIATION

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participating in the
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Please email Kyle here if you
would like to participate.

Boulder^{COUNTY} BAR ASSOCIATION

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